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ABSTRACT

Designed to ensure proper application of environmental and other laws which protect Native American cultural resources, this handbook summarizes the laws that protect cultural resources, describes the proper application of those laws, and offers suggestions to aid Native Americans in taking an active role in ensuring that laws are effective. Part I, "Laws That Protect Cultural Resources," reviews the California Environmental Quality Act, various federal protection acts, and laws that secure access. Part II, "Getting the law to Work for You," contains sections on meeting a crisis and on avoiding a crisis. Section 1, "Meeting a Crisis," discusses: being informed: where to get assistance: getting an attorney: how to organize: getting public support: and being effective in hearings. Section 2, "Avoiding A Crisis," discusses: getting local laws adopted: persuading property owners: and informing the government about local cultural resources. Part III, "Information Section," contains a directory, sample letters and press release, state guidelines, resolutions, historic landmark programs, sources of funding, sources of additional information, a glossary, an index, and a list of statutes, cases, and regulations. (CM)

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CULTURAL RESOURCES HANDBOOK

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Native American Heritage Commssion

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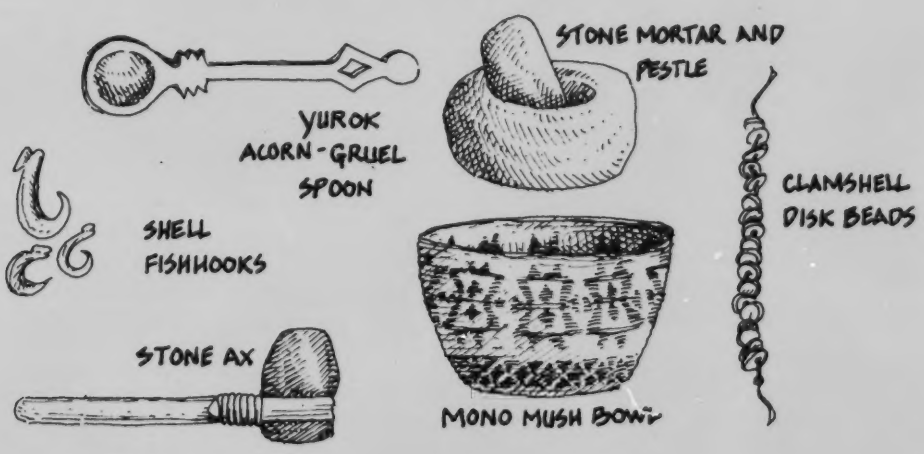
PART I: LAWS THAT PROTECT

The effectiveness of the laws protecting Native American cultural resources depends in great part upon the people of the Indian community. Although several state, federal, and local agencies are responsible for seeing that these laws are obeyed, people of the Indian community are often the only ones who know of the location and value of significant sites and resources in their area. Often, too, local people are the first to become aware of proposed activities that will affect these resources.

The "environmental protection" laws CEQA and NEPA discussed in Sections One and Two of Part I encourage public participation in the decisionmaking process that affects our resources. Repeatedly, the courts have emphasized the right of the public to know about proposed activities and to have their views considered. Since Indian people traditionally have been protective of the Mother Earth, it is altogether appropriate that we take an active role in ensuring that environmental laws, as well as others discussed in Part I, work as they were designed.

In order to be sure these laws are properly applied, you need to know something of how they work. Although in the long run the assistance of an attorney or government agency may be necessary in taking legal action, your knowledge of how the laws work can be very important. Sometimes, key deadlines pass for challenging harmful activities because people are not aware of the procedures they must follow to have their views considered. In this situation, legal help from an attorney may be too late. Similarly, government agencies conducting or approving harmful activities may be unaware of their obligations. The community should be the watchdog, as many of these laws intended. A saying among those with experience in environmental issues is, "Know the rules better than the decisionmakers do!"



Section 1

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act is one of the most important laws for protecting Native American cultural resources. It is usually abbreviated to CEQA (pronounced "see kwa"). This state law was modeled on the federal National Environmental Policy Act (NEPA) discussed in the next section. Much of the following discussion of CEQA applies also to NEPA.

Although CEQA says that it is the policy of the State to "develop and maintain a high-quality environment," it is important to understand that CEQA alone will not stop a project or a government decision that is harmful to Indian cultural resources or other parts of the environment. What CEQA does is to require government agencies to follow a decision-making process based on information about the environment and the harm that may occur to the environment if the project goes forward. CEQA also requires that, if a project goes forward, the harm to environmental resources must be reduced as much as is reasonable. Further, CEQA states that government agencies must give the public the opportunity to provide information on resources to be affected and to suggest ways that harm can be minimized.

In the long run, however, success in stopping or altering a harmful project will depend on how effectively you can persuade government decision-makers, using the opportunities that CEQA provides for making your views heard. Since persuasion is such an important part of using CEQA (as well as some other laws discussed in this handbook), suggestions are given in Part II for: organizing a group, getting publicity, lining up allies, testifying effectively at hearings. To use CEQA effectively, you should consider the materials presented in Part II.

The law is particularly valuable to California's Indian community because "environment" includes a wide range of cultural and natural resources of concern to Native Americans:

- Burial grounds
- Waterways and hot springs
- Wildlife
- Archaeological sites
- Historical and traditional sites
- Mineral resources
- Trees and plants
- Open spaces and woodlands associated with folklore and culture
- Works of art
- Areas associated with established religious, recreational, educational, or scientific uses
- Scenic areas

In addition to helping protect these resources, CEQA also requires that careful attention be given to destructive effects of ill-considered growth: seismic hazards, noise pollution, excessive traffic, air pollution, water pollution, creation of flood hazards, disruption of communities, and waste of energy and fuels.

The means by which CEQA protects the environment is the Environmental Impact Report (EIR). In actuality, the EIR is a **process** as well as a report. Whenever state or local government undertakes a "project" that may have a "significant effect" on the environment, an EIR must be prepared according to a fixed procedure.

- Through the process the public's views are made known and must be considered with respect to environmental issues.
- Harmful effects to the environment are identified.
- Elimination or reduction of harmful environmental effects must be considered.
- Projects with harmful effects may be approved by government only if it can be shown that there are overriding social or economic reasons for proceeding.
- During the process, opponents of a project frequently have time to come up with an alternative or method for reducing destructive effects.

Before exploring the steps in the EIR process, it is necessary to look at the terms "project" and "significant effect," for unless these are present in a legal sense, CEQA does not apply. A "project" under CEQA always requires that state or local government (cities, counties, school districts, water districts, and all other official local agencies) be involved in the activity which may have an impact on the environment. If local or state government is not involved, CEQA does not apply. There are basically three ways governments are involved in a project:

1. A public agency intends to conduct the project directly. Examples of direct involvement include construction projects (public buildings, bridges, stream channels, roads), demolition of public structures, zoning changes, sales or lease of public land, regulation of use of public land, public land management programs such as use of herbicides, etc.
2. Government intends to support the project financially with grants of public money, loans, bond issues, or contracts.
3. The project requires an official action by government, such as a permit, license, certificate, or other approval. Government may thus become involved with private projects through its role in approving subdivision maps, use permits, building permits, zoning variances, annexations of land, etc.

An ordinance or resolution passed by a local government may also require an EIR if it will have a significant effect on the environment. (See Table of Cases and Statutes in the Information Section.) Where this type of government action occurs, CEQA applies to a project conducted by private persons with private money on privately owned land.

It should be clear from the above that a project need not involve construction. It can be a government act, such as sale of public land or a vote on a permit application. A project goes beyond those occurring on public land. Projects on private property may come under CEQA if government approval or funding is involved.

For a project to be subject to the EIR process under CEQA, it is also necessary that it may have a "significant effect" on the environment. The word "may" is emphasized here because if there is even a possibility that a significant effect will occur, then an EIR should be required. (See Table of Cases and Statutes in the Information Section.)

There is an important exception to the above. It occurs under what are called "ministerial acts" of government. There is much controversy about the legal meaning of ministerial. In general, it means that government has no discretion about whether to issue the permit; once the applicant has complied with certain rules, the permit must be issued.

The State Guidelines that are used with CEQA-exempt ministerial acts from the EIR process.* Unless a local government has adopted a law stating otherwise, ministerial acts often include issuance of grading permits, provided that all that is to be done at the site is grading. Since grading is often destructive to archaeological resources and burial sites, this exemption can be a serious weakness in CEQA from the point of view of California Indians.

There are two ways you can meet this problem: (1) you should try to get your local government to adopt laws stating that grading permits will not be exempted as ministerial if the grading may affect Indian cultural resources; and, (2) since grading is almost always preliminary to a larger project (construction, road-widening), you should insist that the grading permit be treated as part of the total project and not be issued until an EIR is done on the entire project.

*The State Guidelines are issued by the Secretary of Resources of the State of California. See Information Section for address to obtain a copy.

What is a "significant effect"? According to the courts, the effect need not be "important" or "momentous" or long-term in the opinion of government officials. If some segment of the community is intensely concerned about the possible environmental effects or there is controversy about what the effect will be, then the EIR process should be followed. This court ruling is particularly important to California Indians since it allows them to argue for an EIR when a project will have an environmental effect that is significant primarily to the Indian community. It is this aspect of CEQA and the EIR process that helps Indian people draw attention to those features of the environment that are important to them: spiritual sites; sources of materials for use in medicine, religion, or crafts; ceremonial places; unspoiled areas vital to a relationship with the natural world; scenic areas necessary to meditation; places of tribal origin.

The State Guidelines for CEQA provide a list of effects that are presumed to be significant. These are contained in Appendix G of the State Guidelines and cover a broad range. A copy of Appendix G appears in the Information Section and should be read carefully. It provides a very strong basis for arguing that a project will have a significant effect. In using Appendix G for this purpose, you should look at all the effects listed. The more you can find on the list that may result from a project, the more persuasive will be your argument for an EIR. Note, however, that if only one effect of those listed may result from the project, an EIR should be required solely on that basis.

Appendix G includes two effects of particular interest to Indian people:

> A project will normally have a significant effect on the environment if it will . . .
> - o (item j) unfavorably disrupt or alter an archaeological site over 200 years old, an historic site, or a paleontological site except as part of a scientific study of the site; or
> - o (item w) conflict with established recreational, educational, religious or scientific uses of the area.

These two categories are broad enough to cover almost every kind of cultural resource of importance to Native Americans in California--burial sites, historic habitation sites, middens, caves, works of art, gathering sites, grinding rocks, meditation places, ceremonial sites, and holy places. Such sites fall under the definition of significant effect if they are of past or present value. At the time this booklet is being published, changes in Appendix G are being considered that may broaden its coverage even further. Should these changed be adopted, copies will be sent by the Native American Heritage Commission as an addition to this booklet.

The Guidelines' list of effects presumed to be significant does not include all possibilities. If you, as a member of the Indian community, believe that a project may have a significant effect on cultural resources, chances are that an EIR should be required even though that effect is not listed in Appendix G. As noted earlier, the courts have ruled that significant effects include those that may cause concern in the community or controversy. As a result, you are the first decisionmaker in the EIR process because you have the opportunity to assert Indian values and views. Further, you are ensuring that government will consider these values and views.

Up to this point, we have focused on conditions that must be present in order for CEQA to apply. In summary, there must be two things present: (1) a "project" that in some way involves state or local government, and (2) a "significant effect" that may result from the project.

If you believe that a proposed activity meets these two requirements, the next question is: How do you ensure that government officials involved in the project will require that an EIR be done? The answer to this question can be found in the discussion immediately following.

The First Phase of the EIR Process

The first phase can include three steps: the Consultation Period, the Initial Study, and the Negative Declaration.

The Consultation Period

Under the State Guidelines for CEQA, the lead agency (the government agency principally responsible for the project) must consult with other concerned agencies regarding the project in order to determine what factors it ought to consider in evaluating the environmental effects of the project. Once the lead agency has consulted with other agencies and concerned individuals or groups, it should include in the Initial Study the issues they have raised.

It is very important that you make potential lead agencies (for example, planning departments, departments of public works, water districts, flood control districts, etc.) in your area aware that local Indians want to participate in the Consultation Period and all later steps in the EIR process. You should point out to these agencies that you wish to help them by alerting them to Indian cultural resources at the earliest possible time in a proposed project so as to avoid later controversy and delay. Too often, those concerned with environmental issues begin their protest after projects have moved close to government approval with the result that those protesting appear to be obstructionists, thus weakening their position. On the other hand, if planning departments and other government agencies know about Indian cultural resources from the start, they may be able to discourage any projects in an important resource area when they are first proposed or insist from the outset that projects be redesigned to avoid harm.

There are several steps you can take to help ensure that knowledgeable Indians will be included in the Consultation Period and other stages of the EIR process:

1. Write letters to the local planning department, planning commission, or state agency in charge of approving the project. Emphasize that Indians with special knowledge of the area wish to participate in the Consultation Period for the project in question and also for future projects. Point out in your letter that you want: (a) to assist the agency in its legal duty to protect cultural resources; and, (b) to help avoid later controversy.
2. Make appointments for meetings with local planning departments and other agencies to discuss further your participation in the Consultation Period for this project and future projects.
3. Specifically request in writing that you be informed of the issuance of a Negative Declaration and that you be sent a draft copy. (Negative Declaration is explained below.)
4. Contact the office-holders in your area and inform them of the Indians' concern for cultural resources. You will want to contact the mayor, city councilmen, members of the board of supervisors, chairmen of planning commissions, heads of regional or state agencies, state senators, and state assemblymen.

Once you are included in the Consultation Period or any other step in the EIR process, you are within your rights in insisting that any information you provide concerning sacred sites not be disclosed by the public agency in such a way that may aid vandals or intruders. Although, by law, all public information is supposed to be available to the public, agencies are not obliged to disclose information that would be harmful to a resource. This provision for protecting resources appears in California Government Code, Section 655.

Once the lead agency has consulted with other agencies and with members of the community, it will either proceed to compile an Initial Study or will begin preparing an EIR.

The Initial Study

If it is clear to a government agency that an EIR should be done, it may order one at the time the project is first proposed. But, if the agency doubts whether an EIR is required, it must do an Initial Study, a preliminary evaluation of the project's possible impact on the environment. The Initial Study briefly describes the project, identifies any environmental effects that may result, and suggests ways that the project may be changed to avoid harmful effects. An agency may not allow a project to go ahead without either an EIR or an Initial Study. Further, the Initial Study is not supposed to be a substitute for an EIR; its purpose is to determine whether a full EIR is required.

It is important that the Indian community also be involved, if possible, in the Initial Study. By providing information to the government agency at this point, you may help ensure that: (1) the Initial Study will result in an EIR being done; (2) Indian cultural resources will not be overlooked; and, (3) acceptable methods for protecting cultural resources will be considered.

In some areas, lead agencies hold public hearings on the Initial Study. This is a very good practice and one you should urge be adopted in your area.

If you do not find out about a project in time to participate in the Consultation Period or Initial Study, all is not lost. You will have similar opportunities to provide information at a later stage in the EIR process, as discussed below. But, if you are able to participate in these two early steps, you may avoid much time-consuming controversy and resistance later on.

What if the government agency conducting or approving a project refuses to do an Initial Study or ignores information you offer? You can either go to court directly and seek a court order requiring the agency to obey the law or you may contact one or more of the following whose addresses and phone numbers appear in the Information Section:

- The Office of Planning and Research in the Governor's Office.
- The Resources Agency of the State of California.
- The State Office of Historic Preservation (cultural resources are often "historic").
- The Native American Heritage Commission.
- The Environmental Unit of the State Attorney General's Office.
- Your State Assemblyman or State Senator (if the project involves a state agency).
- Your city councilmen or county supervisors.

The only way that a government agency can legally refuse to do an Initial Study is by proving that:

1. No project exists under CEQA's definition, or
2. There is no possibility of any environmental effects, or
3. The project is exempt from CEQA, according to certain categories listed in the State Guidelines. The exemptions include emergencies, maintenance, and ministerial acts, as discussed earlier. If you believe these exemptions are being misused, you should immediately contact the Office of Planning and Research.

If a public agency insists that one of the foregoing is true, you are probably going to need the help of an attorney or an appropriate state agency, as suggested.

The Negative Declaration

The Negative Declaration also falls within the first phase of the EIR process. A government agency issues this document if it decides from the Initial Study that no EIR is required. Too often a Negative Declaration is issued when in fact an EIR should be done. In this case, the Negative Declaration should be challenged. No matter how destructive a project may be to cultural resources, there may be no way to have the project questioned legally unless the Negative Declaration is protested in writing before the project is approved.

In order to be sure that you protest the Negative Declaration in time, you will have to keep close watch on the deadlines that the lead agency is using. The State EIR Guidelines define only the broadest deadlines; they do not necessarily set the minimums that an agency may use. For example, an agency can take no more than 45 days to decide whether a Negative Declaration or an EIR will be done, but it can take less time. Similarly an agency can take no more than 105 days from the time of application for a permit to complete the final version of a Negative Declaration but, if the agency wishes to use less time, it may do so. After the final version of the Negative Declaration is complete, the Guidelines only require that it be made available to the public for review for "a sufficient time" before the project is approved. Throughout the preparation and consideration of the Negative Declaration, it will be up to you to find out exactly how much time the public agency has allowed for each part of the Negative Declaration period.

There are four points at which you can become involved with the Negative Declaration process: (1) when the agency is deciding whether to do an EIR or a Negative Declaration (see suggestions on Consulting Period and Initial Study above); (2) when the agency has completed a draft Negative Declaration and made it available for public comment (notice of the Negative Declaration may be posted at the project site or be published in newspapers); (3) when the final Negative Declaration has been completed and is available for public review; and, (4) when the decision is made to adopt the Negative Declaration and approve the project without an EIR.

At each stage, you should supply information regarding cultural resources and insist that an EIR be done. (Arguments against a Negative Declaration are discussed in the following pages.) In addition, you should be certain that you file a challenge to the Negative Declaration in writing after the final version is complete but before the decisionmakers approve the project. Some public agencies have forms for challenging Negative Declarations; in other areas, a simple letter of opposition may be sufficient if no forms are used, but in this situation you may wish to check with an attorney as to the proper wording of your letter. A sample letter is included in the Information Section (Part III).

In order to be sure that you have the opportunity to protest a Negative Declaration, you should request in writing (as suggested under Consultation Period) that the agency inform you of the issuance of a Negative Declaration. By law, the agency must respond to your request.

In most areas, once you have filed a protest to a Negative Declaration, you will probably have a chance to express your views at a public hearing. Part II contains suggestions for testifying at public hearings. Some public agencies hold separate hearings on protests to Negative Declaration, while others hear protests at the same time they meet to consider approval of the project. Usually these hearings are conducted by a planning board or commission. In some areas, the decision of the board is final and can be contested only in the courts. In other areas, the decision must be appealed to the city council or county board of supervisors before going to court. If no public hearings are scheduled or the government agency proceeds to approve the project, you will need the assistance of the courts immediately. You should also immediately contact the state agencies mentioned earlier. Their intervention may eliminate the problem.

The principal issue in challenging a Negative Declaration is most frequently whether a project will cause a significant effect on the environment. As implied in the earlier discussion of significant effect, you must show: (1) that an environmental resource recognized by CEQA exists on or near the proposed project site (for example, a burial ground, rare plants used in Indian medicine, Indian grinding rocks, etc.); (2) that the resource may be affected by the project; and, (3) that the possible effect will be significant.

You will be on the strongest ground if you can show that the resource you are concerned about is one of those specifically listed in the State Guidelines in Appendix G (see Information Section). Since Appendix G covers 24 items ranging from archaeological sites to water quality, the resources you are concerned about will quite likely fit somewhere in the list.

In addition to Appendix G, several other sections of the State Guidelines can be important in arguing that a significant effect may occur. These sections appear in the Information Section of this booklet and you should read them when preparing to argue against a Negative Declaration.

In arguing against a Negative Declaration, the testimony of tribal experts (medicine people, doctors, and spiritual leaders), tribal elders and other knowledgeable Indians is extremely important. In addition, you should have testimony from ethnographers (professionals trained to study living cultures), cultural anthropologists (similar to ethnographers), and archaeologists (trained to study past cultures). Testimony should be in person but written testimony is also helpful. In addition, written evidence in the form of histories, old newspaper stories, articles, and reports is also important, if available.

Where possible, you should also try to support your arguments against a Negative Declaration by getting formal recognition of the cultural resource as "historic." This is done by having the site placed upon a federal, state, or local list of historic places as discussed in the Information Section in Part III. You should also check with the State Office of Historic Preservation to see if the site you are concerned about has already been included on a list of historic places or has been included in

any of the inventories of historic and archaeological sites that are on file in the office. The staff of the Office of Historic Preservation, as well as other state and local agencies, may also be willing to help actively in opposing the Negative Declaration.

There are basically three ways you can establish that, as required under CEQA, there is a "substantial" body of opinion that a significant effect may occur. Each of these three ways should be used: (1) by having written or oral testimony from the tribal experts, other experts, and state agencies discussed above; (2) by having as many tribal elders and knowledgeable Indians as possible express their concerns; and, (3) by having as many other groups as possible (Sierra Club, etc.) testify against the Negative Declaration (see Part II).

What do you do if the decisionmakers refuse to consider Indian testimony or take it seriously? Although the traditions of the Indian community should be considered factual data, these traditions are too often overlooked by government agencies which, in following the State Guidelines, want significant effect to be based on factual data and scientific information. If you are faced with this problem, you should emphasize that oral history and the knowledge of community elders are the Indian community's equivalent of written history and scientific data. For a government agency to refuse such information probably violates the Indian community's constitutional rights. In broadest terms, this situation denies Indian people the opportunity to participate in a process that is open to other witnesses. Should this situation arise, you should contact the Native American Heritage Commission and seek the assistance of a civil rights group.

In arguing against a Negative Declaration, you may also want to emphasize the following points where they apply:

- Is the resource unique or of special importance to California Indians? Coso Hot Springs, the Creation Place for the Paiute Shoshone, for example, is by its uniqueness in the tribe's culture and religion of unquestionable environmental value. No other place can take its place!
- Is the resource of importance to a great number of Indians? Doctor Rock, for example, is sacred to several tribes of Northern California; projects which scar it are significant because it is not only spiritually important but is so to many people.
- Is the resource replaceable for local people? Destruction of plants and wildlife that are rare statewide is clearly recognized as a significant effect. On the local level, plants and animals important to Indians may be relatively rare in a given area, even though plentiful statewide. The destruction or disturbance of these species will have significant effect if local Indian culture will be disrupted by their disappearance from the immediate area.

If you are successful in challenging a Negative Declaration before the decisionmaking board, the board will rule that an EIR must be prepared. If the board rules in favor of the Negative Declaration, you may challenge this ruling in court, but must do so within 30 days of the decision.

STAGE TWO OF THE EIR PROCESS: DRAFT AND FINAL EIR

The Draft EIR

The draft EIR is a report that must be submitted to the public and to other government agencies for comments. In turn, the final EIR incorporates these comments and must take them into consideration in its conclusions. Before the decisionmakers approve the project, the EIR must contain a complete environmental analysis.

The key parts of an EIR are the following (explained below):

- o Project description.
- o Assessment of environmental effects, also called impacts.
- o Project alternatives to eliminate or reduce environmental damage.
- o Measures to reduce harmful effects of proposed project (called mitigation measures).

By law, the draft EIR must be made available to the public for a 30- to 90-day review period.

In reviewing a draft EIR, you will want to evaluate all sections carefully to determine if they contain sufficient and correct information. If you do not object to a deficiency in the draft EIR, you may be stopped legally from objecting to that deficiency later in the EIR process or in court. If a deficiency in a draft EIR to which you objected is not corrected in the final EIR, you can, of course, object to it again in the hearings on the final EIR.

If you have not already done so at this stage, it is important that you provide information to those writing the EIR about Native American cultural resources in the area to be affected by the project. Too often, government agencies overlook information about current Native American use of cultural resources and, instead, rely solely on archaeological evidence of past Indian culture. Until government agencies become more sensitive to existing Native American culture, members of the Indian community will have to take the initiative in providing information. You should inform the public agency about resources in the area, supply names of knowledgeable local Indians, and insist that any experts hired be properly qualified. Ethnographers are the best qualified professionals to evaluate living cultures; cultural anthropologists may be adequately qualified; archaeologists are qualified only to evaluate evidence of the past. You should also insist that professional consultants: (1) interview local Indians; (2) do historical research in libraries and other local sources; and, (3) do on-site research that is nondestructive. In some cases, local Indians have been hired as consultants to assist in compiling the EIR.

EVALUATING AN EIR

The Project Description

By law, an EIR must describe the total scope of a project, whether it is to be undertaken all at once, in stages, or in conjunction with other projects. The courts have held that a project description must give a clear picture of what is actually being proposed so that the public may be properly informed. An adequate project description should include:

- Activities that are preliminary to the main project. (Test drilling, trenching for seismic studies, grading, pipe-laying, access roads, drainage, installation of utilities, etc.)
- The ultimate project. (The timber cutting that will follow road construction in a wooded area; the new subdivisions that will follow construction of a sewer system; etc.)
- Relationship of the project to other activities.

A project description should include mention of other similar activities. In a recent environmental case concerning Owens Valley, for example, the City of Los Angeles compiled an EIR in which the proposed project was described as a modest increase in groundwater pumping to meet local needs of tenants on land owned by the City within the Owens Valley. The project description was judged by the courts to be totally inadequate because nothing was said about the amount of water Los Angeles was already pumping nor about its plans to transport additional water out of the Owens Valley. If a project description does not include related activities, decisionmakers are denied knowledge of possible cumulative effects that may occur should they approve the project.

Assessment of Environmental Effects

To meet the legal requirements of CEQA, an EIR must: (1) identify resources that are in the area of the project; and, (2) identify the impact on these resources that will occur if the project is approved.

Section 15142 of the State Guidelines sets the standards for identifying resources and should be applied in your review of a draft EIR:

> Description of Environmental Setting. An EIR must include a description of the environment in the vicinity of the project, as it exists before commencement of the project, from both a local and regional perspective . . . . Special emphasis should be placed on environmental resources that are rare or unique to that region. (Emphasis added.)

On the basis of Section 15142, an adequate EIR should give special emphasis to such Native American cultural resources as traditional spiritual sites whenever these are "unique to the region."

In addition to focusing on cultural resources as "rare and unique" aspects of the environment, the EIR must also discuss all "significant environmental effects" that may result from the project. These significant effects include those listed in Appendix G of the Guidelines. In addition, Section 15143 of the guidelines includes "human use of the land" and "scenic quality" as factors to be considered in the EIR (see Information Section for text).

If a draft EIR fails to note the presence of a Native American resource or states that the effect on a resource will not be significant, you should provide correct information in writing about the presence of the resource and indicate what significant effect you believe the proposed project will have (see Information Section for a sample letter). Quote from Appendix G or the other Sections of the State Guidelines that have been included in the Information Section. This will show the public agency staff that you are a serious and knowledgeable person whose views should be respected. Staff people sometimes do not know about Appendix G and other Sections of the State Guidelines or do not realize that these include Native American resources. By mentioning these Sections, you will be helping them learn about the importance of Native American cultural resources under CEQA.

In writing to the public agency, you should also point out how the staff may get additional information. Even if you have already done so, identify community elders who are willing to help. In addition, you should, if possible, provide the names of ethnographers, cultural anthropologists, and archaeologists who will support your views. If no Indians were consulted by the staff or its hired experts, you should emphasize in your letter that this oversight in itself makes the EIR incomplete.

Project Alternatives

Under the law, an EIR must explore reasonable alternatives to a project. The alternatives considered must include the alternative of "no project" and other alternatives that would do less environmental damage even if these alternatives would be more costly or would not achieve all the goals of the proposed project. If the proposed project will have a significant environmental effect, then the EIR must make clear why this version of the project is being considered instead of a less damaging alternative or the alternative of "no project."

A key part of reviewing an EIR is deciding whether the alternatives are real alternatives. Or are they just the same project with minor camouflage? Have reasonable alternatives been overlooked? Will the proposed alternatives produce more harm instead of less to Native American resources?

If you are not satisfied with the project alternatives in the draft EIR, inform the public agency in writing why you object to them and, if possible, suggest other alternatives. Examples of alternatives:

- o A proposed widening of a highway that will destroy a burial site. Alternatives: relocation of the highway, widening another route to reduce the need for this road, providing a rail line or other means of public transportation.

- o A creek will be channeled to prevent flooding, and creekside plants used in medicine will be destroyed. Alternatives: "flood plain zoning" to prohibit development near the creeks, thereby reducing potential flood damage while preserving creekside plants; creating a parkland along the creek so no housing will be built close enough to be flooded.

Mitigation Measures

In addition to discussing alternatives to a project, the EIR must discuss ways the project itself can be altered in order to reduce or eliminate harm to the environment. These changes are termed "mitigation measures" and are one of the most important ways to preserve our Native American cultural resources. It is critical that you be aware of the concept of project mitigation. Keep in mind that it is often far easier to get a project changed than it is to have it abandoned entirely.

If the EIR does not suggest effective mitigation measures, you should submit your ideas. Examples of mitigation include:

- o Careful removal of all human remains or artifacts that may be encountered in a project, such to be turned over to the appropriate tribe.
- o Reshaping a project to avoid distributing the earth at a known burial site.
- o Reshaping a project to avoid visual impact on a neighboring sacred site.

Although the courts have ruled that a public agency need not consider all possible mitigation measures, your chances of having a project changed in a reasonable way to prevent environmental damage are very good. With imagination and perseverance, you can use the concept of project mitigation to change a harmful project into an acceptable one.

In addition to compiling your own comments on the draft EIR, you will want to be sure that public agencies and private groups which share your concerns have submitted their comments. The agency which produced the draft EIR is obliged to send the draft to interested individuals, groups, and public agencies and must make public a list of those to whom the draft was sent. Be sure to check that all concerned parties who favor your view have received the draft and, if they have not yet responded, urge them to get their comments in before the deadline. You should also try to find out what their comments will be since this information may help you tactically.

One last consideration is very important in evaluating an EIR: Is it written and organized in such a manner as to be clear and readily understood? EIRs which are loaded with technical jargon, are too long, or are jumbled in organization, fail to perform the function of informing the public and decisionmakers. You have every right to insist that an EIR present the issues and information fairly and clearly.

The Final EIR

The final version of an EIR must take into account the comments received in response to the draft EIR. The comments should be included in the main body of a rewritten EIR or included as an appendix. Further, the final EIR must deal with these comments, either by making changes in the project or by explaining why the changes proposed in the comments were rejected. A final EIR that ignores comments received has been held by the courts to be inadequate.

Before an agency makes a decision based on the final EIR, the document must be available to the public for review, usually at a local library as well as in government offices. Those who commented on the draft EIR may request that a copy of the final EIR be sent directly to them.

After the final EIR has been in circulation for an "appropriate" time as set by the public agency, the agency may hold a public hearing for the purpose of deciding whether the final EIR is complete and acceptable. Although this hearing on completeness is optional, a hearing to decide the fate of the proposed project is required. Often, however, the two subjects are combined in one public hearing.

If the final EIR is not satisfactory (if it fails to correct errors in the draft, fails to respond to comments, introduces new errors, etc.), you should insist that the EIR be judged "insufficient" and sent back for further work. Any objections made to the final EIR must be made at the hearing or you may not be allowed to raise them later in court. If the decisionmakers refuse to recognize that a final EIR is insufficient, you may file a lawsuit on the question. You should also contact the state agencies identified earlier in this discussion.

The other issue to be dealt with is the decision on the project itself. If the project will be harmful to cultural resources, you can argue either that:

1. The project be dropped.
2. An alternative be adopted.
3. The project be changed to eliminate destructive aspects (mitigation).

Or you can begin by arguing for (1) and use (2) and (3) as fall-back positions.

After the decisionmakers have heard all evidence and have considered the final EIR, they are restricted by CEQA to one of the following decisions:

1. The project will have no significant effect and, therefore, should proceed.
2. The project will have a significant effect and, therefore, should be abandoned.
3. The project has been, or will be, changed so as to eliminate or reduce harmful effects.
4. The project will have unavoidable harmful effects but there are overriding social or economic reasons for proceeding with it.

The courts can overturn the administrative decisionmakers if there is not sufficient evidence in the record to support their decision. The "record" is the one made at the final hearing and includes the EIR and all other evidence presented to the decisionmakers. In order for the decision on the project to stand, it must be clear from the record that the decisionmakers considered the EIR in their decision. Further, the decisionmakers must give specific reasons in the record why they chose to proceed with a project that will cause environmental damage.

The courts may also overturn the administrative decision if:

1. The EIR was seriously insufficient (for example, the full scope of the project was not described).
2. The EIR procedure was not properly followed (for example, the draft EIR was not made available to the public).
3. "Due process" was not followed (for example, you did not get a fair hearing, public notice was not given, you were not allowed access to public records, etc. Generally, issues of "due process" arise when you feel you have been treated improperly by officials. The advice of an attorney may be necessary in determining whether a violation of due process has occurred. In all events, you should protest the unfair treatment at the time it occurs or you may lose the right to raise the issue later in court).

There are two things the courts generally will not do:

1. Rule that the decisionmakers were wrong in their choice (unless there is little or nothing in the record to support that choice).
2. Rule that experts on one side of an issue were wrong in their opinions.

It should be clear from the foregoing that the key to stopping or changing a harmful project rests with your powers of persuasion when the final EIR is considered in the hearing. CEQA alone does not stop a harmful project. Instead, it establishes a process whereby you have the opportunity to make the facts known and to argue your views. If you produce convincing evidence and a strong show of public support, you may carry the day. Further, if the decisionmakers ignore proper procedures or fail to substantiate their decision, you may overturn their decision in court.

Section 2

THE NATIONAL ENVIRONMENTAL POLICY ACT

The National Environmental Policy Act was adopted by Congress before CEQA was enacted at the state level. In many ways, the two laws are similar. NEPA, as it is called (pronounced "nee pa"), requires an environmental review process similar to CEQA, with an Environmental Impact Statement (EIS) instead of an EIR.

NEPA applies only to federal projects, which are termed actions. Federal actions include those occurring on federal land, those using federal financial support, or those requiring action by a federal agency in terms of permits, licenses or other forms of approval. When a project involves the federal government and state or local government, an EIS or an EIR will be required. Both will probably not be required. Once it is determined which is the lead agency, that agency will prepare an EIS or an EIR (depending on whether it is a federal or state agency) with information and assistance from the other level of government. Thus, for a federally funded hospital being built by a county, the county may be deemed the lead agency and prepare an EIR to satisfy CEQA, while the federal agency granting the money will not be required to do a separate EIS. The federal agency will, however, be held responsible for the contents of the EIR/EIS under federal law.

Although the procedures under NEPA are similar to those under CEQA, there are several important differences between the ways the two laws actually work. Perhaps one of the most important differences is that federal agencies are more remote from local government. It is often more difficult to communicate with federal agencies and to find out what is going on. Further, federal agencies may be less inclined to hold public hearings during the EIS process.

In view of this potential problem, you should make every attempt to get the help of state agencies in dealing with federal agencies. Several are mentioned in Part I, Section 1; others are identified in the Information Section or in the following text.

A second major difference between NEPA and CEQA is that until November, 1978, NEPA did not have a set of uniform guidelines as did CEQA. For most purposes, this difference has now disappeared. The Council on Environmental Quality (CEQ, pronounced "seek") has issued "Regulations" that must be used by almost all federal agencies. Those agencies which will be permitted to continue to use their own guidelines will probably be held to standards at least as high as those required by CEQ. CEQ Regulations may be obtained from the Council on Environmental Quality or the State Office of Historic Preservation. See Information Section for addresses.

CEQ's regulations and those of individual agencies are extremely important tools for the community. Unfortunately, federal agencies often do not live up to the policies or legal standards of NEPA. You should check every step of the EIS process and all environmental documents produced by a federal agency for conformity with CEQ's rules and the federal agency's own rules. If the federal agency violates either set of regulations, you should complain to the following officials and, if necessary, seek the help of the courts:

1. Office of the Secretary (Interior, Defense, Transportation, Agriculture, etc.) of the department responsible for the project;
2. The Council on Environmental Quality;
3. Other concerned federal agencies (Fish and Wildlife, Environmental Protection Agency, Advisory Council on Historic Preservation. For more federal agencies, see below and the Information Section);
4. Concerned state agencies (Native American Heritage Commission, Office of Historic Preservation, Department of Fish and Game, etc. See Information Section); and,
5. Your local Congressman and California's two U. S. Senators.

NEPA differs from CEQA in a third major way, that of terminology. As already noted, an EIS is the NEPA equivalent of an EIR. An "environmental assessment" is the equivalent of an "initial study," while an "action" is the federal term for "project." A "finding of no significant impact" is the NEPA term for "negative declaration." Much of the rest of the terminology is similar or identical.

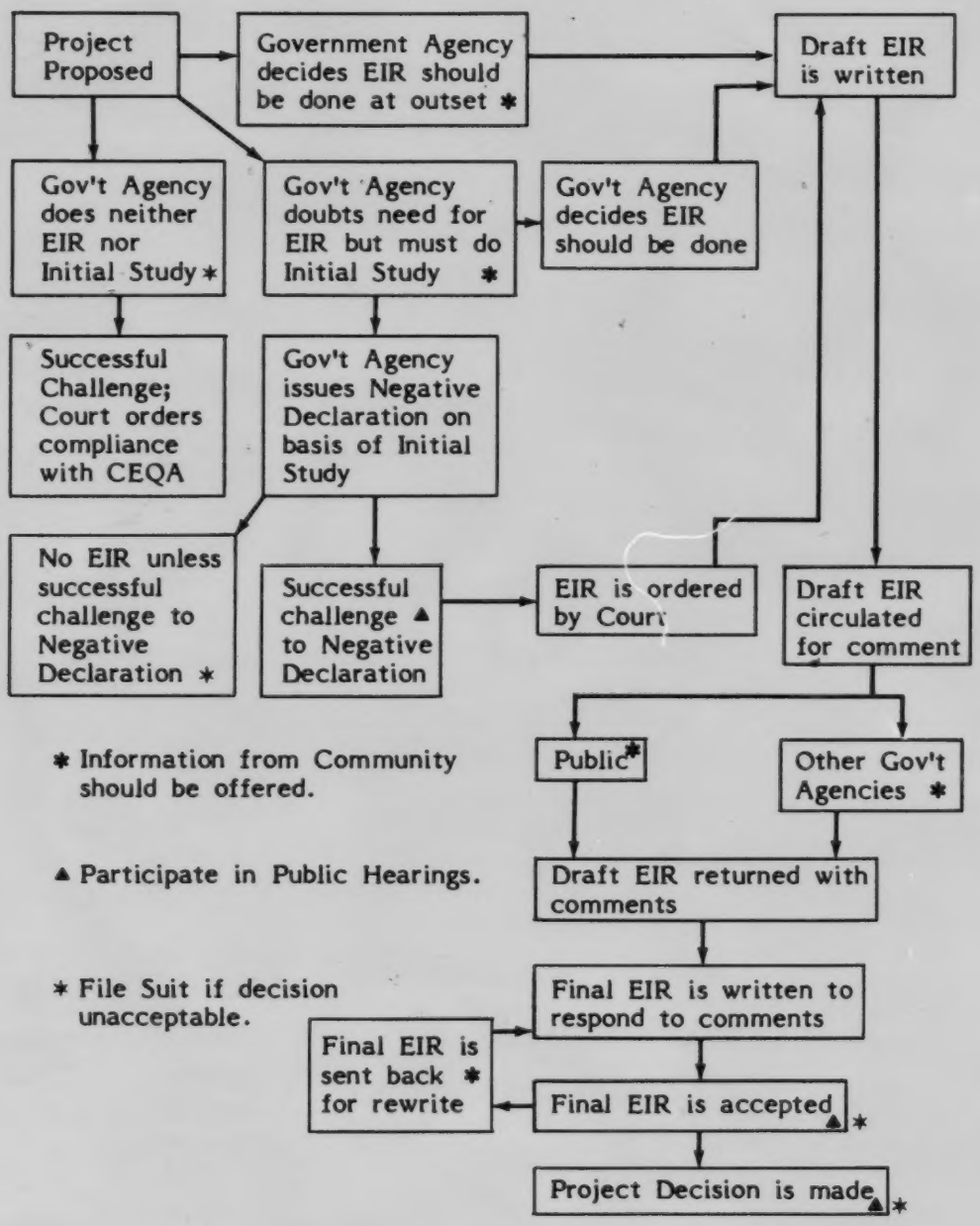
No standard definition of "significant effect" exists for NEPA nor is there a federal equivalent to CEQA's Appendix G, listing effects presumed to be significant. Instead, Section 101 of NEPA suggests some of the resources which may involve a "significant effect":

> In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to . . . preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice. (Emphasis added.)

For the Indian community, the foregoing language is extremely valuable since the term "cultural" provides a solid basis for insisting that an EIS should be done if there is a possibility that a federal action will significantly affect a Native American cultural resource. Further, the new Regulations (Section 1508.8) include as effects under NEPA "aesthetic, historic, and cultural impacts."

Except for the difference discussed above, NEPA and CEQA function in much the same way, as indicated by the flow charts and outlines included elsewhere in this Section. Several points, however, deserve special attention:

EIR PROCESS


Project Proposed
Government Agency decides EIR should be done at outset *
Draft EIR is written
Gov't Agency does neither EIR nor Initial Study *
Gov't Agency doubts need for EIR but must do Initial Study *
Gov't Agency decides EIR should be done
Successful Challenge; Court orders compliance with CEQA
Gov't Agency issues Negative Declaration on basis of Initial Study
No EIR unless successful challenge to Negative Declaration *
Successful challenge ▲ to Negative Declaration
EIR is ordered by Court
Draft EIR circulated for comment
Public *
Other Gov't Agencies *
Draft EIR returned with comments
Final EIR is written to respond to comments
Final EIR is sent back * for rewrite
Final EIR is accepted ▲ *
Project Decision is made ▲ *
* Information from Community should be offered.
▲ Participate in Public Hearings.
* File Suit if decision unacceptable.

1. Under the newest Regulations, a federal agency that is principally responsible for a federal action must hold a "scoping meeting," which is similar to the consultation period under CEQA. The federal agency must consult with experts, state and local agencies, and interested members of the public prior to doing an Environmental Impact Statement. For the same reasons noted in the discussion of CEQA, you should make every effort to participate in these scoping meetings. You can make federal agencies aware of your interest by directly informing the agencies or by notifying state and local agencies that you wish to be informed of any scoping meetings in your area. Further, under the new Regulations (Section 1508.22), federal agencies are obliged to include in the scoping process "any affected Indian tribe."

2. Under the Regulations, the draft EIS must be circulated to the public and to local and state agencies for review and comment. You should be certain, therefore, that state and local agencies with special expertise or interest review the draft EIS.

3. Under federal court rulings, "controversy" within the community regarding a possible significant effect requires that an EIS be done. Federal agencies are often responsive to the "controversy" rule, and it should be emphasized if a federal agency is reluctant to do an EIS.

Two areas of difficulty should be noted in dealing with federal agencies under NEPA:

1. Federal agencies, like state and local agencies, frequently overlook current Native American culture, relying instead almost solely on archaeological information concerning the past. You should insist from the outset that knowledgeable local Indians and qualified professional experts (ethnographers or cultural anthropologists) be consulted by the federal agency compiling an EIS.

   It is extremely important that strong evidence be established early in the process. You don't want a federal agency to obtain inaccurate or incomplete information at the outset since this puts you in the position of having to attack the agency's so-called "experts" later. As you may recall from the discussion of CEQA, the courts are very reluctant to resolve a dispute of expert-versus-expert, so get your expert testimony in at the very beginning to minimize the chances of being undercut by unqualified people. Any federal agency which resists the attempts of Indians to ensure that their culture is properly described and valued will be placing itself in a very precarious position regarding possible legal action on the grounds of denial of civil rights.

   Further, under the new Regulations (Section 1501.2 (2) (d)), federal agencies must consult with Indian tribes early in the planning of the project even if it is being conducted by private persons and it is not yet certain that there will be federal involvement.

2. Federal agencies too often use the environmental assessment to avoid the full EIS process. Frequently, a decision is made that there will be no significant effect on Native American culture and a "Finding of No Significant Effect" is issued. You must be on the alert for this and be prepared to challenge the finding. The guidelines of the federal agency ordinarily contain the period for protesting a "Finding of No Significant Effect." Keep in mind that once this period passes, you may be barred from legally opposing the "Finding of No Significant Effect." Format for protesting the finding may also be found in the agency's guidelines. In addition, you should in all cases protest by letter to CEQ and to appropriate state agencies.

Your involvement in the EIS process should continue to the adoption of the final EIS and the ultimate decision on the project under consideration. As with CEQA, you should be prepared to contribute information to the draft EIS and to be certain that other government agencies, groups, and individuals also offer information. Careful review of the draft and final EIS is also critical and should follow the suggestions offered in the discussion of CEQA. As with CEQA, you should be prepared to discuss alternatives and mitigation under NEPA.

Throughout the process, should the federal agency violate the process or produce unacceptable decisions, you should contact the Council on Environmental Quality as well as all concerned federal and state agencies, your elected representatives, and private groups which share your concerns (see Information Section). Federal agencies, like other segments of society, tend to be more responsive when they are the center of attention. In fact, serious mismanagement of environmental questions has most often occurred when the community has been unaware, or has failed to raise sufficient protest, or has entered the process too late.

NEPA and Historic Preservation Laws

In certain circumstances, NEPA dovetails into two other important environmental measures: the National Historic Preservation Act of 1966 (NHPA) and Executive Order 11593. Each of these provides additional protection for cultural and historic resources beyond that provided by NEPA alone.

The National Historic Preservation Act of 1966 (NHPA) contains two provisions important in protecting Native American culture. First, NHPA creates the National Register of Historic Places as "a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, and culture" (see Information Section). Second, NHPA sets up the Advisory Council on Historic Preservation, consisting of members of the President's cabinet and public appointees. The Council has authority under the act to review federal projects for their impact on National Register properties. On the basis of this authority, the Council has issued guidelines for use by federal agencies in conforming with the preservation goals of NHPA. Conformity with NHPA and the Advisory Council's guidelines fulfills a federal agency's obligations under NEPA with respect to National Register properties.

The general effect of the foregoing is to introduce two watchdog agencies into the NEPA process. The first of these is the Advisory Council; the second is the State Historic Preservation Officer (SHPO), who acts as a quasi-agent for the Advisory Council at the state level. If a federal project may have a significant effect upon a National Register property or on a property that may be eligible for the National Register, the responsible federal agency must consult with the SHPO and reach an agreement as to steps to be taken to protect the property. The agreement is termed a "Memo of Agreement" and is subject to approval by the Advisory Council. If the SHPO and the federal agency cannot reach an agreement, the Advisory Council will intervene. The benefit of NHPA is that powerful allies are available in helping to protect qualified properties.

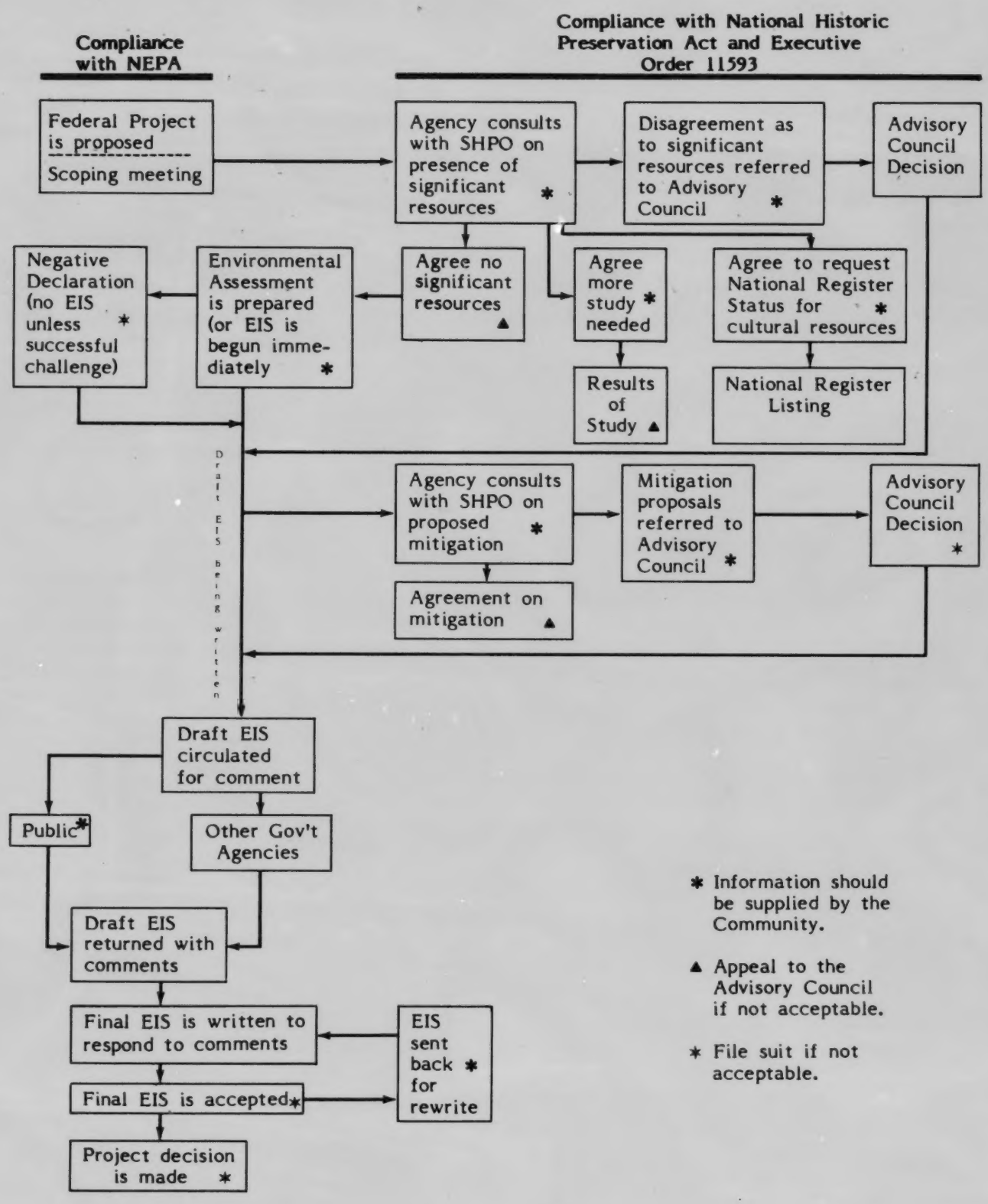
Executive Order 11593 supplements NHPA. Under this presidential order, all federal agencies must do three things: (1) survey their holdings to identify possible National Register sites; (2) apply for National Register status for such sites; and, (3) protect and preserve such sites until National Register status is awarded. Once National Register status is awarded, the property falls under the protection of NHPA and the Advisory Council guidelines. To assist federal agencies in complying with Executive Order 11593, the Advisory Council has issued additional guidelines which require federal agencies to consult with the SHPO and take other steps similar to those followed under NHPA guidelines. (The following charts show the procedures on a step-by-step basis.)

The benefit of Executive Order 11593 to the Indian community is that federal agencies must identify possible historic, archaelogical, and cultural sites in their control before beginning a project and then adopt plans that will minimize damage to the resource. If a cultural resource is within the control of a federal agency, you should contact the agency concerning its responsibility under the presidential order. These responsibilities include inventorying historic and cultural sites within their control, nominating significant sites to the National Register, and taking steps to protect sites even when no federal project has been proposed. Unfortunately, many federal agencies are either unaware of their responsibilities under the Executive Order or have ignored them because of budget concerns or other reasons. You should insist that a federal agency not only consider protection of sites when a project is proposed but take all steps necessary when vandalism or deterioration threaten a site.

In all matters concerning National Register properties or those that may be eligible, you should contact the State Office of Historic Preservation (staff to the SHPO) for assistance in ensuring that NEPA and Executive Order 11593 are followed.

The protection given by NHPA and Executive Order 11593 applies only to properties that are on the National Register or may qualify for the Register. Anyone may prepare a National Register application and need not secure permission of the property owner. For further information contact the State Office of Historic Preservation and see the National Register materials in the Information Section.

FEDERAL PROJECTS UNDER NEPA AND HISTORIC PRESERVATION LAWS


Compliance with NEPA
Compliance with National Historic Preservation Act and Executive Order 11593
Federal Project is proposed
Scoping meeting
Agency consults with SHPO on presence of significant resources *
Disagreement as to significant resources referred to Advisory Council *
Advisory Council Decision
Negative Declaration (no EIS unless * successful challenge)
Environmental Assessment is prepared (or EIS is begun immediately *
Agree no significant resources ▲
Agree more study * needed
Agree to request National Register Status for * cultural resources
Results of Study ▲
National Register Listing
Draft EIS being written
Agency consults with SHPO on proposed mitigation *
Mitigation proposals referred to Advisory Council *
Advisory Council Decision *
Agreement on mitigation ▲
Draft EIS circulated for comment
Public*
Other Gov't Agencies
Draft EIS returned with comments
Final EIS is written to respond to comments
EIS sent back * for rewrite
Final EIS is accepted*
Project decision is made *
* Information should be supplied by the Community.
▲ Appeal to the Advisory Council if not acceptable.
* File suit if not acceptable.

The Federal Highway Laws

All projects conducted, financed, or licensed by the Federal Highway Administration (FHWA) are subject to two important federal laws that are broader than either NEPA or the two historic preservation laws. These projects include ones conducted by agencies within the FHWA, the Coast Guard, and the Urban Mass Transit Administration.

The first of these laws is Section 4 (f) of the Federal-Aid Highway Act of 1968 regarding findings contained in an EIS. Under Section 4 (f), the EIS must:

1. Consider historic properties that are of local, state, or national significance even if these properties are not on the National Register (FHWA regulations, thus, extend the EIS process to a broader range of properties than is covered under the federal laws discussed earlier.)

2. Establish that "no feasible and prudent alternatives" exist before land from a "historic site" can be used in a project. (This sets a higher barrier to harmful projects than do the other federal laws.)

In order for a cultural site affected by an FHWA project to qualify for the protections of Section 4 (f), two things must be done:

1. The site must be made to fit into the category of "historic." This may seem difficult when a site is part of current cultural practices. Suggestions for solving this problem appear in the Information Section in the National Register application for the Six Rivers area. Although a site does not have to be on the National Register for Section 4 (f) protection, the National Register application for Coso Hot Springs illustrates how cultural sites can be described as "historic."

2. A local, state, or federal official (or agency) must be persuaded that the site is "significant." At the state level, you should work with the State Historic Preservation Office and the Native American Heritage Commission to secure recognition of significance. (See Information Section on "State Registration Programs and Inventory of Historic Sites.") If you decide, instead, to obtain local recognition, you may try any of the three following approaches:

   a. Request that one or more local Indians be designated by city or county government as "officials" for the purpose of determining whether local cultural sites are significant under Section 4 (f).

   b. Work with an existing local agency to obtain the designation of "significant" for a site (such as historic heritage commissions, landmark committees, etc.).

   c. Ask the city council or county board of supervisors for a resolution declaring the cultural site to be of significance.

The second major law affecting FHWA projects and cultural resources is the Department of Transportation Act of 1966 (DOT Act as amended in 1968) in which Congress stated that it is "national policy that special effort be made to preserve . . . historic sites." This law, like Section 4 (f), covers any historic site of national, state, or local significance and is not limited to National Register sites.

One of the most important features of the DOT Act is the way the U. S. Supreme Court has interpreted it. In a case involving the routing of a proposed highway through a park, the Court ruled that destruction of lands protected by the DOT Act (including historic sites) could proceed only if the Secretary of Transportation determines "that alternative routes present unique problems." The Court also ruled that higher costs or community disruption were not strong enough reasons for refusing to use an alternative route as a means of preserving protected lands. In balancing one possible route against another, "paramount importance" is to be given lands protected by the Act.

To qualify a cultural resource for protection under the DOT Act, you must follow the same two steps that are necessary for Section 4 (f) protection, discussed earlier. In summary, Section 4 (f), the DOT Act, and the Supreme Court decision give the Indian community a very strong basis for resisting federal highway projects that would disturb cultural resources.

Section 3

LAWS THAT SECURE ACCESS

For cultural sites to be of use to the Indian community, they must be accessible. Problems involving access can arise when property is publicly or privately owned. Public property is that which is owned, leased, or controlled by any agency of federal, state, or local government. Private property is that which is owned by an individual, group, or corporation. Private ownership of land includes the right of the owner to exclude others and to use the land as he or she wishes, provided such use conforms to zoning and other land use laws.

The legal approach to resolving problems of access differs according to the type of ownership. It is discussed below in terms of "constitutional rights" (regarding public property) and "prescriptive easements" (private property). Using the law to acquire access is not, however, the only way to resolve such problems; Part II offers suggestions for other ways to acquire access.

Constitutional Rights

The First Amendment of the United States Constitution says, in part, that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." This clause is commonly referred to as the "freedom of religion" provision of the Constitution. Since constitutional rights apply to all Indians, the "freedom of religion" provision of the First Amendment secures their right to practice their traditional religion without interference by the federal, state, or local government.

Since much of Indian religion involves the use of resources, government interference with the use of cultural resources on public land violates the First Amendment and is, therefore, illegal. This principle was tested in the courts in a case in which an Indian successfully asserted his right to kill a deer out of season on public land as a necessary part of his religion.

If you or your Indian group is denied access to a traditional sacred site or cultural resource on public land, you should challenge the denial on constitutional grounds. Legal assistance may be available from the State Office of the Attorney General, California Indian Legal Services, the American Civil Liberties Union, or other agencies or groups listed in the Information Section. You may also wish to consult with the Native American Heritage Commission.

New Federal Policy of Access

In July 1978, the United States Congress formally recognized the right and need of American Indians to use natural resources that are necessary to the practice of traditional religion. In adopting Senate Joint Resolution 102 P.L. 95-341 (reprinted in the Information Section), Congress not only recognized Indian rights but also instructed all federal agencies to provide "access to sites, use, and possession of sacred objects and the freedom to worship through ceremonials and traditional rites" (Emphasis added). This important instruction from Congress applies to resources on federal land or within federal control. Since approximately 50% of the land in California is controlled by federal agencies, the importance of Senate Joint Resolution 102 is very great. This affirmation of the religious rights of Native Americans should be used whenever federal agencies refuse or unreasonably limit access to Indian cultural resources. Assistance with such problems may be requested from the Native American Heritage Commission.

In addition, P.L. 95-341 may be helpful in persuading local and state agencies to adopt similar policies regarding access on public lands. It can be argues that the resolution expresses a congressional interpretation of a constitutional right and that this interpretation should be honored by state and local governments. If a state or local government resists this argument, you should seek the help of an attorney competent in constitutional law and civil rights. The question of whether P.L. 95-341 is binding upon state and local governments as well as federal agencies has not yet been tested in the courts.

New State Provision For Gathering Sites

In August 1978, the California State Legislature adopted Senate Concurrent Resolution 87 (reprinted in the Information Section) under which the State Lands Commission is instructed to lease at no cost three parcels of land to the Native American Heritage Commission as "traditional gathering site preserves" for use by California Indians. The sites are to be used for obtaining materials necessary to traditional crafts and medicine. California Indians are now working with the State Lands Commission, which supported the proposal, to identify three parcels suitable for the purpose.

In addition to providing for access to three specific sites, the resolution is important because it expresses the State Legislature's recognition that "Native American artisans, medicine people, and others interested in traditional crafts and the healing arts find it increasingly difficult to locate and use sites where materials may be gathered for their work." This recognition of Indians' problems of access may prove helpful in persuading other state agencies to allow access to needed resources.

Prescriptive Rights

If access is denied to a sacred site on private property, virtually the sole legal means of securing access is through what are called "prescriptive rights." This theory of property law recognizes that persons other than a property owner may acquire a right to use a property through having made use of the property over a sufficient period of time. Under California property law, the use must have been for the five years preceding the time at which the user takes court action to assert his or her right. The use must also have been "open" (the owner would have noticed it), "continuous" (on a regular basis), and "hostile" (without the owner's permission). If you are successful in court in asserting prescriptive rights, you will secure what is termed an "easement by prescription." The easement, whenever possible, should be placed in the name of your tribe or Indian group rather than in the name of an individual since you will want the easement to last beyond the life of any individual.

BEST COPY AVAILABLE

PART II: GETTING THE LAW TO WORK FOR YOU

Section 1:

MEETING A CRISIS

The environmental laws discussed in Part I depend in great part on the community for their effectiveness. If these laws are to protect our resources, citizens must act as watchdogs, taking an active role in ensuring that the laws are followed. This section offers suggestions on how you can get these laws to work effectively by:

1. Being informed about projects that may affect cultural resources;
2. Knowing where to get assistance;
3. Getting an attorney;
4. Building an organization;
5. Getting public support; and,
6. Being effective in hearings.

Each of these topics is discussed below. The suggestions are drawn from the actual experiences of a number of citizen groups that have worked to protect environmental resources. Though not all of these suggestions apply in every situation, many may prove useful to you.

Being Informed

In order to use environmental law effectively, you have to know what projects or other actions are being planned that may affect cultural resources in your area. Keep in mind that the sooner you know what is happening, the more you can do about it.

How do you find out what projects are being considered for your area? By law, governments are supposed to inform the public in some manner, at least regarding certain types of planned actions. Various means are used to do this: notices in newspapers, posting of notices in government buildings, posting at the project site, etc. Unfortunately these methods are often inadequate and projects can move a long way toward government approval before citizens know what is going on. In practical terms, the result is that the burden of finding out what is going on still rests on the public.

To keep yourself informed, use several techniques:

1. Watch the newspapers carefully; published notices of upcoming government decisions are often small items buried somewhere among the ads. As an example, the notice of a negative declaration for a major water project affecting cultural resources in several Northern California counties recently was published as a one-inch item in an obscure place in a large newspaper. Only one of the many people concerned about the project saw the item. In addition to scanning the local newspaper for notices of specific actions, check the "Legal Notices" section of your newspaper.

2. Watch the agendas of city and county offices and those of state and federal agencies that control projects in your area. Local governments frequently publish agendas for the meetings of boards of supervisors, city councils, and planning commissions. Other local agencies, such as water districts, often make their agendas available only on request. The same is true of state and federal agencies regarding meetings. In order to be informed, you should either request that agendas be sent to you on a regular basis or stop by the government offices to see them.

3. Ask to be kept informed about specific areas or specific projects you are already aware of. Public agencies must respond to this kind of request, particularly if it is in writing. This is an especially useful approach in dealing with state, federal, and local agencies that make decisions without holding public meetings.

4. Get to know and be known by staff members of government agencies. Often you can find a person who works for the city planning department, for example, who shares your concerns or respects your interest. Such a person may not only tell you about local projects, but also tip you off to upcoming state or federal actions. Using the law effectively also means knowing when and where various decisions will be made and by whom.

Where to Get Assistance

Part I identifies a number of federal and state agencies which help protect cultural resources. In addition, you should know about other government agencies and private groups that provide assistance in environmental matters. A list of these appears in the Information Section. Included are agencies and groups that do one or more of the following:

1. Provide environmental information or legal advice;
2. Join in opposing environmentally harmful projects; or,
3. Help enforce the law either by bringing private lawsuits or, in the case of government agencies, by taking official action against offenders.

You should check the listing carefully to identify agencies and private groups that may be helpful to you. Most of those listed are statewide or national in scope.

In addition to the groups and agencies listed, you should be alert for help at the local level. You may find important allies in the local Audubon Society, on college campuses, in the local chapter of the Sierra Club, in the local American Civil Liberties Union, or among members of historical societies. Depending on the issues in your situation, allies may be found in a number of places. The more issues you can identify, the more groups and individuals may be drawn to your cause.

Getting An Attorney

A properly qualified, effective attorney can do a great deal to help in protecting cultural resources. If, for example, a cultural resource is threatened with immediate destruction, you will need an attorney to get a "temporary restraining order" to halt the destructive action. Other activities that require professional assistance include:

1. Obtaining a "writ of mandamus" from a court to force a public agency to abide by the law or carry out a duty;
2. Securing a remedy from the courts if you have been denied a fair hearing or there has been other violations of due process; and,
3. Obtaining from a court a determination of your rights of access across private property or public lands.

A qualified attorney can also be very helpful outside of court in dealing with law enforcement officials regarding vandalism, in presenting the legal aspects of your position in public hearings, in negotiating easements and other land use matters with property owners, and in drafting protective laws (see Section 2: "Avoiding a Crisis").

Legal help may be available free of charge from the public agencies or private groups listed in the Information Section. If you are unable to secure legal assistance from these sources, you should try to find a private attorney who is competent in land use law, property law, and civil rights. In addition, the attorney should be experienced in dealing with government agencies and elected officials. Equally important, you will want an attorney who is committed to your cause, assertive, and open to new ideas. Cultural resources law is a new area and requires attorneys who are not only highly competent but willing to try new theories. To identify such an attorney in your area, consult with the nearest law school or ask members of environmental groups. Staff members of resource protection agencies are frequently aware of outstanding attorneys and may suggest names.

If the cost of a private attorney is a problem, you should suggest that any suit which is filed be a "class action" (on behalf of a group of people who have been or will be affected), with the fee on a "contingency" basis. This means that the attorney will be paid only if the case is won and, under circumstances that qualify, the fee will be paid by the person or agency being sued.

How To Organize

Although you may be seeking help from government agencies, groups, and an attorney, the most important help can be that from the Indian community. Organizing a group to protect cultural resources takes time and effort, but the benefits are well worth the investment:

- An organization has more clout than would the same number of individuals.
- An organization helps ensure that work will be shared.
- Being organized can lead to a united front and a unified strategy.

Basically, building an organization requires that you first contact members of the community who already share your concerns or that you educate the community about these concerns. The struggle to preserve cultural resources can be a profound experience for those who participate. It is important, therefore, to cast your nets widely and try to include members of the Indian community who have perhaps not shown much previous interest in traditional ways.

Do not be discouraged if those who participate actively in your cause are few in number. Many organizations represent the interests of a large number of people while a few people actually do the work and take a visible role. As far as possible, however, you should try to get as many people as you can to do something in the organization: sign a petition, telephone others about meetings, write letters to agencies or officials. In a time when many Americans feel "you can't fight the system," participation in a cause can help overcome feelings of hopelessness and apathy. In fact, one of your most important jobs in organizing will be to explain to people that environmental laws are designed to give them an opportunity to influence government decisions. These laws offer the Indian people the chance not only to protect their cultural resources, but also to assert their identity as an important group in American society.

While it is desirable to have many people involved in the cause, it is also important that a united front be presented on issues. There must be one or more people speaking for the group who are the only ones authorized to make statements to the press, agency officials, and others you will be dealing with. This person (or persons) should be the only one who represents the group or else there will be confusion over the issues and a division of your forces.

To hold a group together and achieve your goals, it is well to have those goals clearly in mind from the outset and well understood by all. If these goals include "fall-back positions" which you will adopt as a compromise, it is wise that these be discussed with the entire group before you must adopt them or else the group may feel it has been "sold out."

Inevitably, in any group effort, there are a few people who seem to be concerned more with their personal prestige than with the success of the effort. If such a person surfaces in your group, you should weigh the problems he or she can cause against the work contributed. If this seems to be a useful person, give him or her a fine title and suitable work, but keep actual decisionmaking elsewhere, since people of this type often let their egos blind their judgment.

Most groups find it absolutely necessary to "wash their dirty linen" only in private. All disputes should be kept hidden from the opposition or else your group will appear weak. Further, you do not want to encourage the opposition to try the old tactic of "divide and conquer."

Effective organizing means keeping up morale. People need to be thanked for the work they do and they need recognition from the group. They also need to be kept informed, particularly of good news. In addition, it is important to provide a group feeling by having social events along with work sessions. And--win or lose--there should be a celebration of the fact that you gathered together and worked together for a good purpose.

The structure of an organization will vary according to the situation and the people available. Ideally, there should be:

- A chairman to call meetings, govern them, set the agenda in conference with other members.
- A finance chairman to raise funds if needed and keep track of expenditures.
- A telephone chairman to contact the membership.
- A press person to prepare news releases.
- A spokesman (perhaps one of the above) who is able to speak well, cope with situations, and can think quickly.

You may want to create additional positions to deal with specific tasks (research, gathering signatures, etc.) or you can create titles as a way of rewarding people or making them feel important.

To protect individuals in the group from possible financial liability, you should consider forming a nonprofit corporation. This step helps ensure that you will not personally be liable for damages should one of your members be injured or other accidents occur during a group activity. It also protects you from personal liability if any of your members run up debts in the name of the organization. There are basically two types of nonprofit corporations. The simpler provides the foregoing protections while the second type--the so-called tax-exempt nonprofit corporation--also allows contributors to your group to deduct donations from their taxes. If your group adopts this second type of incorporation, however, the group will be prohibited by law from lobbying activities.

If your group receives contributions, a bank account should be opened in the group's name. Careful records of expenditures should be kept. In addition, you should check with the Secretary of State's Office to determine whether your group is obliged to register as a lobby group or follow other regulations.

In order to do a good job of representing the Indian community in your area, it is necessary to stay in touch either through general meetings or through a newsletter. When people know what you are doing and why, there is less chance of division.

The activities that a group engages in depend in great part on what goals have been adopted. Examples of activities include:

1. Researching and preparing an application for the National Register, where appropriate;
2. Participating in the environmental review process;
3. Educating the general community and its political leaders to the importance of a site (see below) or to Indian culture generally;
4. Fund-raising to meet the costs of any legal action or other expenses;
5. Determining the need for local protective laws and what should be in those laws; lobbying for passage of such laws by city or county government;
6. Compiling a list of knowledgeable Indians within the community and reliable ethnographers, cultural anthropologists, and archaeologists;
7. Watchdogging government agencies for plans or actions that will affect cultural resources;
8. Becoming known to legislators and other members of government; and,
9. Gathering signatures on petitions in support of your group's position.

Getting Public Support

In many situations, government agencies are open to persuasion by the public; moreover, elected officials are particularly sensitive to public opinion. The more public support you can build for your position, the more likely it is you will be successful in protecting cultural resources.

Basically, there are two ways to gain public support and both should be used:

1. Inform the public of the merits of your cause, and
2. Gain the support of other groups on the basis of issues that appeal to their interests.

Informing the Public

You can publicize your cause in a number of ways to get public support. Generally, activist groups try to find the least expensive means: newspaper stories, radio and television coverage, letters to the editor, editorials of support from the news media. Although this kind of publicity sometimes comes spontaneously, most groups find that they must work to obtain it. Understanding how the media works can be useful since your issue often competes with many others for attention. The best way to get publicity for your cause is to make the job as easy as possible for the media.

The heart of a successful publicity effort is the press release. A sample copy of a press release appears in the Information Section, showing the proper format. Using this format is very important in getting your news into the papers since it meets the needs of the newsmen. In addition to using the proper form, you should keep the following in mind:

1. Press releases should never run more than two pages. Additional material can be provided separately as back-up material.

2. Opinions should be expressed in the form of statements by your chairman or other spokesman and placed in quotation marks: "The destruction of this site will seriously invade the First Amendment Rights of our people," stated Timothy Gray, Chairman of the Indian Cultural Protection Association.

3. Every publicity story should give information in the form of who, what, when, where, why, and how. These facts should be at the beginning of the publicity release, just as they would be in a news story.

4. The news release should carry the name and phone number of a contact person who is authorized by the group to answer questions from newsmen.

5. News releases should be submitted to the media ahead of deadlines. You can find out what these deadlines are by calling the news editors.

Radio and television offer additional possibilities for news coverage. Radio time is relatively easy to obtain since stations generally use a great deal of newscopy. Many stations have devices for recording interviews over the phone. You can call the news bureau of your local station and arrange for an over-the-phone interview. The person to be interviewed should be prepared to give a clear and concise statement in the form of short sentences that radio listeners can readily absorb. Often, the interviewer will ask questions designed to draw out more information or highlight the controversial aspects of the story. It is important that you use these questions to make additional points in favor of your cause rather than getting angry or seeming confused.

Television news coverage is somewhat more difficult to obtain since the work of film crews is expensive. In planning for television coverage, you should try to think of stories that are visual in nature and contain action of some sort.

Since television news programs generally air in the early evening, stations prefer to do their filming before noon in order to have sufficient time to process and edit film. Advance notice of events will help the station plan for coverage.

A press conference is frequently used to reach all three kinds of media at the same time. In inviting the media, you should give several days advance notice, contact them personally, and give them a good idea of what the topic of the press conference will be. Press conferences should be used only for strong news stories. The basic idea of a press conference is that it provides a chance for newsmen to ask questions. If your story is too "thin," the newsmen will resent using their time to come to the event.

Good press relations are a key factor in building public support since it is the media which, to a large extent, educate the people to issues. In addition, news coverage of your issue keeps the pressure on public officials. To secure good press relations, keep in mind the following:

1. Treat all newsmen equally and honestly. Don't leak stories to a favorite or mislead reporters. Be sure of your facts.
2. Never say anything to a newsman that you don't want to see used.
3. Take time to get to know the newsmen personally and educate them to Native American culture and your point of view.
4. Remember that newsmen are supposed to present both sides of a controversy. Don't be angered if they challenge your statements or print replies from the other side.
5. Remember to thank the reporters for giving attention to your story.

Other means of getting free publicity include letters to the editor and editorials of support. Letters to the editor should be brief and well-considered. Logic and humor are often more effective than a harsh statement. A steady flow of letters over a period of time is better than a one-shot barrage of many letters at the same time.

To secure editorial support for your position, you should make an appointment with the editor and/or the publisher in order to explain your position informally. You should be frank in saying you need the support of the newspaper editorially but your approach should be low-key and non-threatening. Many television and radio stations also run editorials and you should contact the station manager about setting up a meeting to solicit the station's support.

Throughout your publicity campaign, keep in mind that the public's memory is short. An issue must be presented over and over again before it makes a significant impression. Plan your publicity campaign so that you will get maximum mileage out of your activities and thus build a story in the public consciousness. Many groups actually plan their group efforts with publicity as the top consideration. What are the activities that produce publicity?

1. Formation of your group: "The Indian Cultural Protection Association of San Antonio County was formed this week for the purpose of . . ."
2. Election of officers: "Alan Weller was named this week to head the Committee to Save Oak Hill . . ."
3. Announcement of a position: "The Nipa River Indians are opposed to construction of a dam . . ."
4. Filing a suit or a formal protest: "An injunction was sought this week against the issuance of a building permit . . ."
5. Securing a grant: "Federal funds have been awarded the Nipa River Tribe for establishment of an Indian Cultural Center . . ."
6. Fund-raising activities: "Members of the Nipa River Tribe will sponsor a booth at the county fair to raise funds for purchase of an easement . . ."
7. Cultural resource recognition: "A portion of the Nipa River has been placed on the National Register of Historic places in recognition of the site's significance in the traditional religion of the Nipa River Indians . . ."

Enlisting Allies

A second way of gaining public support for your position is to develop allies among other groups. Public agencies and elected officials are generally far more responsive when they see that more than one segment of the community is concerned about an issue. It is not a sign of weakness to seek allies, but a basic and respected tactic of effective organizing.

In trying to identify potential allies, consider all the possible interests that will be affected by the issue. Possible interest groups include:

1. Wildlife groups;
2. Bird groups;
3. Sportsmen;
4. Hikers;
5. Rock climbers;
6. Environmentalists;
7. Archaeological societies;
8. Historic preservationists;
9. Adjacent property owners;

10. Taxpayer groups--their interest is in whether a project will cost more in terms of public services than it will produce in increased taxes paid by the project;

11. Competing commercial interests--they may not want a project that will benefit their rival. Thus railroads have joined environmentalists in fighting a highway project in order to deprive the trucking industry of a benefit;

12. Civil rights groups--groups such as the American Civil Liberties Union will frequently intercede where a group is being denied religious or other freedoms; and,

13. Church groups--some are interested in helping Indians define their cultural rights in the interest of social justice, while others may be interested in taking a stand on the basis of the issue of freedom of religion.

Not all of these interest groups are compatible with each other and some may also have interests which are antagonistic to yours. But if you agree on the basic issue in this situation--preservation of a natural area, for example--then you should work together on that issue as allies, even though you want to preserve the area for conflicting reasons. You can settle the other conflicts later.

Cooperation among groups varies. In some cases, it consists only of an agreement to appear at hearings or otherwise take a public position. Whatever the degree of cooperation, the alliance should not be visible. Each group should appear to be acting independently and spontaneously. When it appears that many different oxen are being gored, the government decisionmakers are more likely to reject a project. Coalition politics of this type is the way that many groups in American society increase their effectiveness far beyond their numbers.

Being Effective in Hearings

As Part I indicates, many decisions concerning cultural resources are made at public hearings. These hearings give you your chance to persuade decisionmakers to vote your way, whether the issue is cancelling a project that will destroy a resource, adopting a protective ordinance, granting historic status to a site, or any other issue that requires a vote by a public body.

The first step toward winning is identifying who will make what decisions and when. Will it be the planning commission? The city council? A state agency? The county board of supervisors? A commission or board? The county geologist? Many decisions move through different levels, building upon the recommendations of other boards, commissions, and agencies. You should identify each step and work to get a favorable decision at each. You should also determine if there is a method of appealing any unfavorable decision.

Winning in a public hearing also depends on doing some of the persuading beforehand through what is called lobbying. By meeting with a decisionmaker before a hearing, you are demonstrating that you are serious enough about the issue to take the trouble to come personally. Second, you provide the decisionmaker a chance to talk with you outside of the glare of a public setting: he or she can speak more frankly about the issues, admit to areas of ignorance, reveal the arguments of opposing interests. In effect, you will later go into the public hearing knowing more about the problems you have to overcome in order to get a favorable vote. Lobbying also gives you the chance to count your votes ahead of time: who is with you, who is against you, who is still wavering. With this information, you can sharpen your arguments to reach the undecided votes that you must secure for a majority decision in your favor.

In lobbying, don't overlook the possibility of using allies. In fact, some individuals or groups that have influence with a decisionmaker may be willing to approach him or her behind the scenes when they would not be willing to take a position publicly.

Preparing for a public hearing should also include approaching staff members who assist the decisionmakers. In addition to direct staff (planning department personnel assigned to a project going before the planning commission, for example), don't overlook such key people as the city manager or the county counsel. Decisionmakers often rely heavily on their own advisors, so, as far as possible, you will want staff to be on your side. If the county counsel, city attorney, or legal advisor to a board or commission disagrees with your view of the legal issues, you should get an attorney immediately who can help turn the issues around.

In preparing testimony for a public hearing, keep in mind the following:

1. Testimony should be brief. Decisionmakers resent lengthy presentations.
2. Testimony should be balanced. Avoid repetition and concentrate on hitting all the important points. Be sure your allies will be present to speak on appropriate issues.
3. Have your facts well in hand. Know as much as possible about the issue in question. If land use is the issue, find out all you can about ownership, taxes paid, zoning, existing resources, alternatives to destruction, possible mitigation measures, and government policies concerning such land.
4. Consider getting publicity. Alert the press that your issue will be heard and provide background information ahead of time.
5. If some of your supporters are not able to attend the hearing, get their written statements.

Once the hearings are underway, you should be alert to the following:

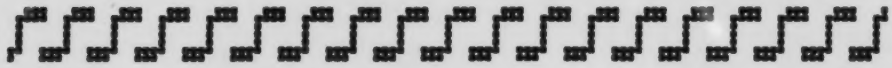
1. The opposition may try to talk the issue to death. Insist that a time limit be enforced if it appears that your opponents are putting the decisionmakers to sleep; otherwise, they won't have any energy to listen to you when it's your turn.

2. Emphasize the points that really count. From your lobbying and your observations at the hearing, you should try to determine what is really bothering the decisionmakers. Are they confused about a legal issue? Are they unclear as to some fact? Do those who support you need a reason for doing so? Would you do better to request the vote be postponed until the next meeting? A hearing is not just a chance to make a speech; ideally, it should be a dialogue in which you discover what is on the minds of those you are trying to persuade.

3. Get on record, if necessary. If you will be appealing the hearing decision in court, you will have to have a record. This term not only refers to the physical record being made by a government stenographer or a tape recorder, but also to what is in the record. Any issues which you plan to raise in court must be in the record of the hearing. If you do not argue a point in the hearing, you cannot later bring it up in court. This applies not only to issues concerning the cultural resource, but also to procedural questions concerning an EIR or an EIS (not properly circulated in draft form, written in a confusing way, etc.). It also applies to questions of "due process" concerning the hearing itself (hearing held at an unreasonable location, equal time not given, etc.). If making a record means that you have to talk longer than the chairman will allow, explain your reason for wanting additional time.

4. If the decision goes against you, immediately ask the board to reconsider the question. This is a legal tactic that may save you time later if you go to court; judges sometimes order a question to be sent back for reconsideration by the public agency if such has not already occurred.

5. If you win in the hearing, be sure to thank those who voted in your favor publicly and any staff members who supported your position privately. There may come a day when you will again need their good will.



Section 2:
AVOIDING A CRISIS

The best way to preserve cultural resources is to plan ahead and take steps to protect them before a threat arises. This Section focuses on three preservation approaches that involve planning:

1. Getting local laws enacted to protect resources.
2. Persuading private property owners to protect resources or grant access to sites.
3. Informing government agencies about cultural resources.

GETTING LOCAL LAWS ADOPTED

The following material describes various types of local laws ("ordinances") and government policies that you may want to have adopted in your area and how to go about it.

Burial Disturbance Ordinance

What should a government or individuals do when Indian remains are uncovered in the course of a construction project or other activity? Although an EIR for the project may discuss this question, the EIR approach involves a case-by-case solution. A broader approach is to secure adoption of a city or county ordinance that regulates the disposition of human remains whenever they are uncovered. Several cities and counties in California have already adopted such burial disturbance ordinances, and copies of them are available from the State Office of Historic Preservation. A review of these ordinances may help you decide what provisions are most useful in your area.

Zoning Ordinances

Cities and counties have the power to enact zoning ordinances to control land use. Traditionally, they have been used to designate certain areas for housing and others for commercial activities. In recent years, however, new types of zoning have been developed, including several types useful in protecting cultural resources: open space zoning, flood plain zoning, agricultural zoning, historic district zoning. Each of these zoning designations--once it is applied to a piece of land--means that the use of that land is restricted by law to the use implied in the name of the zoning until such time as the zoning is changed. One or more of these types of zoning may be useful in your area in protecting cultural resources from development projects.

In order for a local government to use these zonings, the government must first create the type of zoning and then apply that zoning designation to suitable properties.

Conditioning Development

Local government has power over land use beyond the zoning power. If a developer wants approval of a new housing subdivision, for example, it is possible legally for the local government to insist that it will approve the development only if the developer allows some of the land to remain as open space. Getting your local government to adopt this approach may be useful in protecting a cultural resource (a grove of trees, a stream, etc.) that would otherwise be destroyed by the proposed development. This type of government control is often called an exaction.

General Plan Policies

By law, each county and city must adopt a general plan for the land in its jurisdiction. Along with the general plan, there are usually statements of policy expressing the local government's commitment to fulfilling housing needs, recreational needs, etc. If your local government adopts a policy statement expressing an intent to preserve cultural resources, this statement can be very useful in subsequent government decisions concerning specific sites. In effect, such a policy statement gives you a good argument: the local government should abide by its stated policy. Further, it may be open to a lawsuit if it does not. The policy statement also gives the decisionmakers strong grounds for resisting the pressures of developers: government is acting in accordance with its previously stated policy. Ideally, you should try to get local government to go beyond a policy statement of intent and to adopt, in addition, a specific plan for a cultural resource preservation program.

How To Get Laws Adopted

The first step in securing protective laws and policies is knowing exactly what you want and getting it down on paper in legal language. Preservation groups have sometimes made the mistake of going to their local lawmakers with ideas rather than words. The result has been that they have obtained ineffective ordinances with little hope of improving them because it's much harder to get an ordinance changed than it is to get a good one adopted in the first place. To get what you want, you should have your provisions spelled out in legal form by your own attorney.

The next step in securing protective laws is lobbying. One approach is to try for the support of local government staff people first. Meet with them, explain your proposal, and get their reaction. You may, thus, be in a position to get a better response from the local lawmakers who will act on the proposal after consulting with staff. Another approach is to win the support of city councilmen or county supervisors first, on the assumption that if you have the support of these lawmakers, staff people will follow their lead.

In lobbying, don't overlook getting the public support discussed in the previous section. In addition, you should try as far as possible to get some support from property owners who may be affected by your proposal. Even if you are not able to get their support, you may lessen their opposition by taking the time to explain carefully what the proposal will actually do.

PERSUADING PROPERTY OWNERS

Private ownership of land means that an individual or corporation owns certain rights to the land. Among these are the rights to develop the property (except in violation of zoning) and to exclude other people from it. Except as provided by specific local ordinances, private owners have no duty to protect cultural resources or any duty to admit Indians to spiritual places on their properties. There are two ways you can persuade a private owner to cooperate in the use and protection of cultural resources. Both of these approaches assume that a property owner will acquire something in return.

Tax Benefits As An Incentive For Owners

In some circumstances, an owner may be willing to cooperate if you can point out the possibility of a tax benefit. There are three types of taxes that concern most people: income tax, estate tax, and property tax.

Should a property owner donate some property rights to a qualified nonprofit organization (such as your group), he or she may reduce income taxes on the basis of having made a gift to a "charitable organization." This would apply if the owner donated either the right to development of the property (agreeing not to develop it), a "scenic easement" (agreeing not to change the property), or an easement of access (the right to enter the property).

Similarly, a donation of a property right can reduce estate taxes (the federal taxes that must be paid by the heirs) because the owner will be reducing the value of the property that will be left to the heirs upon the owner's death. A reduction of property taxes under state law may also be possible in the above circumstances. In order to receive the property tax reduction, the donation must be made to a government agency. In the event this involves development rights or a scenic easement, your concern then is ensuring that the government agency will continue to protect the resource. Further, if an owner donates an access easement to a government agency, the agency might be obliged to allow all members of the public to use the easement. This could be inconsistent with use of the resource for sacred rites unless the Indian community is able to enter into a rental agreement with local government for exclusive use of the site during the period of sacred use.

Purchase or Lease

A second way that private owners may be persuaded to relinquish some property rights is through purchase or lease. Sale of a property right may also bring estate tax benefits and property tax benefits because the value of the property is reduced. To safeguard any rights your group may purchase, the group should be incorporated; if purchased by individuals, the right might die with the individuals. In entering into any such arrangement, you will need the advice of an attorney since easements and other property interests are complex matters of law.

Funds for purchase or lease of property rights can be sought from various sources. At the local level, you should consider industry, church groups, environmental groups, clubs, and historical societies. Ideas for raising funds in your area are available from the National Trust for Historic Preservation (see Information Section). Raising funds locally helps heighten public awareness of Indian culture and also may provide the "matching funds" you may need in order to get money from other sources.

Beyond the local level, funding for cultural resource preservation may be available from the government agencies and private organizations listed in the Information Section. Sources of information on how to get such funds are also listed.

INFORMING GOVERNMENT ABOUT LOCAL CULTURAL RESOURCES

As pointed out in Part I of this handbook, if the planning agencies of government are aware of cultural resources before projects are proposed, the projects can be planned from the outset to avoid harm to the resources. You should consider taking the initiative in informing such agencies as county and city planning departments about the location of cultural sites.

Many traditional Indians have been reluctant to provide information for fear it will lead to vandalism or intrusion by the public on sacred ceremonies. You can insist, however, on giving the information solely to a department head or a specifically appointed representative and only if a commitment is made to keep the information secret. In spite of laws providing that all government information is open to the public, there is an exception for information of this kind (see Table of Cases and Statutes).

In addition to providing information on sites, you should also give a list of knowledgeable tribe members to government agencies. In this way, agencies will know whom to contact for information when a project is proposed.

Planning ahead for protection of cultural resources takes considerable thought and work. In the long run, however, you may avoid the kind of crisis that causes even more work.

BEST COPY AVAILABLE

DIRECTORY: NAMES, ADDRESSES, AND PHONE NUMBERS

NATIVE AMERICAN GROUPS AND INDIVIDUALS CONCERNED WITH CULTURAL RESOURCES

Ms. Beatrice Alva
122 East Pearl Street
San Gabriel, CA 91776

Amador Tribal Council
c/o Harold Burris
Route 1, Box 188
Ione, CA 95640

American Indian Council
703 Sommer Avenue
Bakersfield, CA 92805

American Indian Council
13750 San Pablo Avenue
San Pablo, CA 94806

Barona Indian Reservation
1095 Barona Road
Lakeside, CA 92040

Big Lagoon Rancheria
Box 40, Star Route
Trinidad, CA 95570

Big Pine Reservation
P.O. Box 384
Big Pine, CA 93513

Bishop Tribal Council
P.O. Box 548
Bishop, CA 93514

Butte Tribal Council
1245 Lincoln Street
Oroville, CA 95969

California Indian Dance and Cultural Group
P.O. Box 4
Sloughhouse, CA 95683

Candelaria American Indian Council
301 North "A" Street
Oxnard, CA 93030

Capistrano Indian Council
102 Esparto
Shell Beach, CA 93449

Chicken Ranch
Star Route 103
Jamestown, CA 95327

Choinumni Tribal Council
2517 East Tyler
Fresno, CA 93701

Cortina Rancheria
Mrs. Mary Norton
P.O. Box 41113
Sacramento, CA 95814

Covelo Indian Community Council
P.O. Box 393
Willets, CA 95490

El Dorado County Indian Council
P.O. Box 4
Diamond Springs, CA 95667

Elem Rancheria
P.O. Box 618
Clearlake, CA 95433

Rose Enos
15310 Bancroft Road
Auburn, CA 95603

Fort Bidwell Reservation
P.O. Box 103
Fort Bidwell, CA 96112

Fresno Indian Center
703 North Fulton
Fresno, CA 93721

Grindstone Creek Rancheria
P.O. Box 63
Elk Creek, CA 95939

Dick Johnson
1610 - 14th Street
Sanger, CA 93657

Florence Jones
7480 Dry Creek Road
Redding, CA 96001

Mendo-Lake Pomo Council
564 South Dora Street
Ukiah, CA 95482

Morongo Reservation
11581 Potrero Road
Banning, CA 92220

Northwest Indian Cemetery Protective Association, Incorporated
P.O. Box 2668
McKinleyville, CA 95521

Ohlone Indian Cultural Association
1110 North Main Street, Suite 16
Watsonville, CA 95076

Ms. Julia Parker
P.O. Box 1644 Yosemite Lodge
Yosemite National Park, CA 95389

William Pink
40787 Second Street
San Jacinto, CA 92383

Pit River Tribal Council
P.O. Box 1438
Burney, CA 96013

Plumas County Indians Incorporated
P.O. Box 833
Greenville, CA 95947

Henry Rodriquez
365 West Second Avenue
Escondido, CA 92025

San Joaquin Council
144 Mun Kwok Lane
P.O. Box 68
Stockton, CA 95202

Santa Barbara Indian Center
808 East Cota Street
Santa Barbara, CA 93103

Soboba Reservation
P.O. Box 487
San Jacinto, CA 92383

Susanville Rancheria
Freda Owens
P.O. Box 754
Susanville, CA 96130

Suskol Indian Council
155 Chelsea Avenue
Napa, CA 94558

Torrez-Martinez Reservation
41060 Sunset Lane
Hemet, CA 92343

Toyon Wintu Center
P.O. Box 979
Central Valley, CA 96019

Tri-County Indian Development Council
324 "F" Street
Eureka, CA 95501

Tule River Tribal Council
P.O. Box 589
Porterville, CA 93257

Ya-Ka-Ama
6215 Eastside Road
Healdsburg, CA 95448

NATIVE AMERICAN HERITAGE COMMISSION
MEMBERS AND STAFF

Jay Johnson, Chairman
P.O. Box 1617
Yosemite Lodge
Yosemite National Park, California 95389

Ed Castillo
9898 Monroe Avenue
Aptos, California 95003

Patricia E. Duro
P.O. Box 648
Valley Center, California 92082

William J. Franklin
P.O. Box 4
Sloughhouse, California 95683

Milton M. Marks
P.O. Box 2627
McKinleyville, California 95521

Mabel L. McKay
560 Dexter, Apartment J
Santa Rosa, California 95404

Neddeen P. Naylor
974 Zucco Road
Lone Pine, California 93545

Jane K. Penn
11-755 Fields Road
Banning, California 92220

Talbert M. Wilson
P.O. Box 167
Cassel, California 96016

Victoria L. Roberts
Acting Executive Secretary
Native American Heritage Commission
1400 Tenth Street, Room 109
Sacramento, California 95814

GOVERNMENT AGENCIES AND OFFICIALS

Federal Agencies:

Advisory Council on Historic Preservation
Executive Director
1522 "K" Street, N.W.
Washington, D.C. 20005
(202) 254-3495
(For assistance on problems concerning National Register properties subject to federal control or involved in federal projects.)

Council on Environmental Quality (CEQ)
Attn: Chief Counsel Nicholas C. Yost
722 Jackson Place N.W.
Washington, D.C. 20006
(202) 633-7032
(202) 395-5750
(For problems concerning NEPA or environmentally harmful actions by federal agencies.)

National Register of Historic Places
U.S. Department of the Interior
Washington, D.C. 20240
(National Register information.)

Office of Archaeology and Historic Preservation
Department of the Interior
Washington, D.C. 20240
(Ensures that federal agencies spend required amounts for study and salvage of cultural resources resources affected by federal projects.)

For addresses and telephone numbers of other federal agencies, call toll free to the Federal Information Center nearest you (listed under United States Government in your phone book) or your Congressman. Local offices of federal agencies may also be found in your phone book under United States Government and the name of the agency.

State Agencies:

Native American Heritage Commission
1400 Tenth Street, Room 109
Sacramento, CA 95814
(916) 322-7791
(Principal state agency responsible for protecting California Indian cultural resources; located in the Office of the Governor.)

Office of Historic Preservation
Dr. Knox Mellon, State Historic Preservation Officer
P.O. Box 2390
Sacramento, CA 95811
(916) 445-8006
(Responsible for applications and information concerning National Register of Historic Places, state landmarks programs, grants for historic preservation; assistance in securing compliance with NEPA and CEQA.)

Office of Planning and Research
Projects Coordination Unit
1400 Tenth Street, Room 121
Sacramento, CA 95814
(916) 322-7795
(Assistance with problems under CEQA.)

Office of Secretary for Resources
Norman Hill, Counsel
1416 Ninth Street
Sacramento, CA 95814
(916) 455-9134
(Problems with CEQA.)

Officials:

Secretary of State
March Fong Eu
925 "L" Street
Sacramento, CA 95814
(916) 445-6371
(Information on incorporation of non-profit groups and lobbying regulations.)

U.S. Senator Alan Cranston
10960 Wilshire Blvd.
Los Angeles, CA 90024
(213) 824-7641
(or)
1 Hallidie Plaza
San Francisco, CA 94102
(415) 556-8440

U.S. Senator S. I. Hayakawa
523 West Sixth Street
Los Angeles, CA 90014
(or)
1390 Market Street
San Francisco, CA 94102
(415) 556-8686
(or)
650 Capitol Mall
Sacramento, CA 95814
(916) 440-2621

To contact your Congressman, State Senator, or Assemblyman, consult your telephone directory or ask your local newspaper for the address and phone number.

LEGAL ASSISTANCE

Federal: **United States Environmental Protection Agency**
Region IX
215 Fremont Street
San Francisco, CA 94105
(415) 556-6695

State: **Office of the Attorney General**
Environmental Unit

6000 State Building
350 McAllister Street
San Francisco, CA 94012
(or)
555 Capitol Mall
Suite 350
Sacramento, CA 95814
(or)
3580 Wilshire Blvd.
Suite 800
Los Angeles, CA 90010
(or)
110 West "A" Street
Suite 600
San Diego, CA 92101

Local: Contact your City Attorney, County Counsel, or District Attorney.

Private Groups:

American Civil Liberties Union
Consult your phone directory for nearest group or write to:
American Civil Liberties Union
814 Mission Street
San Francisco, CA 94103

California Indian Legal Services
1736 Franklin, Suite 900
Oakland, CA 94612
(415) 835-0284
(or)
P.O. Box 993
Bishop, CA 93514
(714) 873-3582
(or)

P.O. Box 1228
Eureka, CA 95501
(707) 443-8
(or)
P.O. Box 2457
Escondido, CA 92025
(714) 746-8941
(or)
P.O. Box 488
Ukiah, CA 95482
(707) 462-3825

Center for Law in the Public Interest
10203 Santa Monica Blvd.
Los Angeles, CA 90067
(213) 879-5588

Committee for Legal Environmental Action and Research (CLEAR)
c/o California Western School of Law
3902 Lomaland Drive
San Diego, CA 92107
(714) 224-3916

Conservation Law Society of America
1500 Mills Tower
San Francisco, CA 94104
(Charges fees.)

Ecology and Conservation Committee
San Francisco Barristers' Club
111 Sutter Street, Room 1200
San Francisco, CA 94104
(415) 421-3430

Environmental Defense Fund
2728 Durant Avenue
Berkeley, CA 94704
(415) 548-8906

Environmental Law Society
University of San Diego School of Law
Alcala Park
San Diego, CA 92110
(714) 270-1353

Environmental Law Society
University of Santa Clara School of Law
Santa Clara, CA 95053
(408) 984-4266

Environmental Law Society
Stanford University School of Law
Stanford, CA 94305
(415) 321-2300, ext. 3018

Environmental Law Society of San Diego
P.O. Box 99154
San Diego, CA 92109
(714) 270-1353

Friends of the Earth
529 Commercial Street
San Francisco, CA 94111
(415) 391-4270
(Additional activities besides lawsuits.)

Legal Action Fund
Izaak Walton League of America
19001 Valley Drive
Villa Park, CA 92667
(714) 637-0032

Natural Resources Defense Council
2345 Yale Street
Palo Alto, CA 94306
(415) 327-1080

Public Advocates, Inc.
433 Turk Street
San Francisco, CA 94102
(415) 421-3430

Sierra Club Legal Defense Fund
311 California Street
San Francisco, CA 94104
(415) 398-1411

GROUPS THAT MAY BE OF ASSISTANCE

Hundreds of groups exist in California that may share your concerns, ranging from environmental issues to religious ones. Those listed here were chosen because they are either statewide or may put you in touch with other groups in your area.

California Academy of Environmental News Writers
c/o Tom Harris
San Jose Mercury
San Jose, CA 95131
(Newsmen interested in stories concerning resources.)

California Native Plant Society
2490 Channing Way
Room 317
Berkeley, CA 94704
(Chapters throughout state. See phone book or consult main office.)

California Wildlife Federation
1107 9th Street
Sacramento, CA 95814
(916) 447-4025
(Area chapters throughout the state. See phone book or call main office.)

Californians For Preservation Action
P.O. Box 2169
Sacramento, CA 95810
Executive Secretary may be reached at (408) 354-1943
(Protection of historic and cultural properties.)

Conservation Center
1237 East Main Street
Ventura, CA 93001
(805) 643-1916
(Resource center for Ventura County; contact with many groups.)

Conservation Co-Ordinators Inc.
P.O. Box 4161
Woodside, CA 94062
(415) 851-7418
(Nonprofit group; helps with conservation campaigns.)

Conservation Planning Alliance of Riverside County
3701 Canyon Crest
Riverside, CA 92507

Council for Planning and Conservation
P.O. Box 228
Beverly Hills, CA 90210
(213) 276-2685
(Clearinghouse for environmental information on issues in Los Angeles County; provides assistance and advice.)

Desert Protective Council Inc.
P.O. Box 33
Banning, CA 92220
(Works to protect historic and spiritual resources of deserts.)

Ecology Center
2179 Allston Way
Berkeley, CA 94704
(415) 548-2220
(Clearinghouse for San Francisco Bay Area; in contact with many groups.)

Ecology Information Center
1221 20th Street
Sacramento, CA 95821
(916) 444-3174

Environmental Action Coalition-Earth Center
388 North Third Street
Upland, CA 91786
(714) 985-3064
(Center for western San Bernardino County.)

Environmental Action Council
P.O. Box 99114
San Diego, CA 92109
(Coalition of San Diego County groups.)

Environmental Center
211 Santa Rosa Avenue
Santa Rosa, CA 95404
(707) 542-2196
(Center for Sonoma County.)

Federation of Western Outdoor Clubs
P.O. Box 2067
Carmel, CA 93921
(408) 624-2469
(Coalition of groups in California interested in wilderness preservation and resource conservation.)

Fund for Animals
P.O. Box 1214
Studio City, CA 91604
(Endangered species.)

Greater Los Angeles Council of Divers
P.O. Box 2787
Hollywood, CA 90028
(Opposes water pollution.)

Headlands Inc.
235 Montgomery Street
San Francisco, CA 94104
(415) 433-5800
(Preservation of Northern California coastal headlands.)

Izaak Walton League of America
19001 Valley Drive
Villa Park, CA 92667
(714) 637-0032
(Major environmental concerns, including restrictions on mining.)

Jenner Coastside Conservation Coalition
P.O. Box 64
Jenner, CA 95450
(707) 865-2581
(Sonoma County coast.)

Marin Ecology Center
P.O. Box 725
San Anselmo, CA 94960
(415) 453-5300
(Marin County coalition.)

Mendocino County Conservation and Planning Foundation
P.O. Box 17
Mendocino, CA 95460
(Preserve natural beauty of Mendocino County.)

Monterey Ecology Center
P.O. Box 711
Pacific Grove, CA 93950
(408) 372-9478
(Center for Monterey Peninsula.)

Napans Opposing Wasteland (NOW)
1393 Green Valley Road
Napa, CA 94558
(Preservation in Napa County.)

National Audubon Society
Regional Office
P.O. Box 4446
Sacramento, CA 95825
(916) 481-5333

Forty chapters in California and two Council offices:

Los Angeles Audubon Society
7277 Santa Monica Boulevard
Los Angeles, CA 90046
(213) 876-0202

Golden Gate Audubon Society
1749 Grove Street
Berkeley, CA 94709
(415) 549-1038

(Wildlife and environmental protection; educating people about their relationship to the environment.)

National Speleological Society
5370 East Harvey
Fresno, CA 93927
(Protection of caves and their contents.)

Northcoast Environmental Center
640 10th Street
Arcata, CA 95521
(Center for Humboldt-Del Norte coast.)

Peninsula Conservation Center
1178 Emerson Street
Palo Alto, CA
(415) 328-5313
(Center for San Francisco Peninsula.)

Project Land Use
Star Route Box 1142
Tehachapi, CA 93561
(Land use issues in Kern County.)

Riverside Ecology Center
University of California
Riverside, CA 92507
(Local resource center.)

San Diego County Fish and Game Association
P.O. Box 1252
San Diego, CA 92112
(Sportsmen.)

San Diego Ecology Center
El Cajon Blvd.
San Diego, CA 92104
(714) 280-4820
(Local resource center.)

San Jacinto Conservation League
P.O. Box 53
Idyllwild, CA 92349
(San Jacinto Mountains protection.)

San Leandro Ecology Center
1190 Davis Street
San Leandro, CA 94577
(415) 635-8200
(Center of Alameda County.)

Santa Barbara Community Environmental Council
15 West Anapamu Street
Santa Barbara, CA 93101
(805) 962-2210
(Area environmental center.)

Sierra Club
Headquarters:
1050 Mills Tower
San Francisco, CA 94104
(415) 981-8634

Field Offices:
927 Tenth Street
Room 201
Sacramento, CA 95814
(916) 444-6906

2410 Beverly Blvd.
Los Angeles, CA 90057
(213) 387-6482
(Chapters and groups throughout the state with subcommittees on Indian issues, thermal sites, and almost every aspect of the environment. Obtain addresses and phone numbers of groups nearest you by contacting the above offices.)

Solano Ecology Center
P.O. Box 991
Fairfield, CA 94533
(707) 425-6225
(Environmental center for Solano County.)

Sonoma County Environmental Center
211 Santa Rosa Avenue
Santa Rosa, CA 95404
(707) 545-2196

Southern California Canoe Association
3966 South Menlo Avenue
Los Angeles, CA 90037
(Waterways.)

The League to Save Lake Tahoe
74 Los Altos Square
Los Altos, Ca 94022
(415) 941-3943

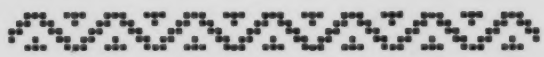
Trout Unlimited
1100 Glendon Avenue
Los Angeles, CA 90024
(California branch of national group, concerned with practices promoting good fish supply.)

United New Conservationists
487 Park Avenue
San Jose, CA 95110
(408) 287-7831
(Coalition that has worked with Ohlones in resisting destructive projects.)

Valley Ecology Center
401 South "K" Street
Livermore, CA 94550
(415) 443-5483
(Livermore Valley.)

Ventura County Environmental Coalition
P.O. Box 68
Ventura, CA 93003
(805) 643-2273
(Twenty-five groups in Ventura County.)

Wild Game Propagation Club
84811 Via Conchilla
Coachella, CA 92236
(714) 398-5725
(Imperial County group.)



SAMPLE LETTER COMMENTING ON A DRAFT EIR

Planning Department
City of Nipa

Regarding the Draft EIR for proposed Nipa River Dam

The Nipa Indian Resources Committee has reviewed the Draft EIR for the proposed Nipa River Dam project. Members of the Committee are qualified to speak for the Nipa people regarding resources within the project area that are of importance to Nipa religion and culture. In reviewing the EIR, the Committee has determined that the EIR is deficient in the following ways:

1. The EIR's description of resources in the project area does not include information about the Willow Grove that is the location of the annual Renewal Rites of the Nipas. These rites are central to Nipa religion and, therefore, the Willow Grove is an important cultural resource that should be considered in the EIR. The flooding of the Willow Grove would be a "significant effect" on the environment under CEQA State Guidelines Appendix G and other sections.

2. The EIR is also deficient because it fails to present true alternatives to the project. All of the alternatives presented are concerned with different sites proposed for the dam or its best location. The EIR should consider such true alternatives as piping in water for the city's needs from another source. The EIR should also consider the alternative of "no project" by suggesting a program of water conservation.

3. The EIR fails to suggest satisfactory mitigation measures regarding the destruction of a burial site in the project area. The remains of our Nipa ancestors should not be sent to a university for study as the EIR proposes. These ancestral remains are sacred to the Nipa people and should be left undisturbed or reburied if the project is approved.

4. The Draft EIR has not received proper circulation to concerned agencies. Although the project area contains important cultural resources, the Draft EIR has not been sent to the Office of Historic Preservation in the Department of Parks and Recreation, State of California.

In addition to the deficiencies in the EIR noted above, our Committee wishes to point out that the proposed project constitutes a violation of the First Amendment rights of the Nipa people because the project will prevent the Nipa people from practicing their religion.

We strongly urge that a meeting be held between appropriate members of your staff and our Nipa Committee to discuss these issues. Members of the Committee are also available to serve as consultants on questions of Nipa religion and culture. Further, we urge that qualified ethnographers or cultural anthropologists be consulted. It appears from the Draft EIR that to date only archaeologists have provided expert information. Although archaeological information is valuable, it focuses on the past and we are concerned that the present culture of the Nipa be considered.

We are confident that you will respond to these comments in revising the Draft EIR and we look forward to working in a spirit of cooperation in resolving these issues.

Sincerely,

Peter Stern, Chairman
Nipa Indian Resources Committee

SAMPLE LETTER OPPOSING A NEGATIVE DECLARATION

Planning Department
City of Nipa

Protesting a Negative Declaration for proposed Nipa River Dam

On February 10, 1979, the Planning Department of the City of Nipa issued a Negative Declaration regarding the proposed Nipa River Dam project. The Nipa Indian Resources Committee opposes the Negative Declaration and intends that this letter serve as formal protest to the Negative Declaration.

Our opposition to the Negative Declaration is founded upon the following:

Appendix G of the State EIR Guidelines, which have the force of law, states that: "A project will normally have a significant effect on the environment if it will . . . (item j) unfavorably disrupt or alter a district, site, building, structure, object or value constituting California's history, pre-history, architecture and cultural heritage or cause irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, sacred shrine and other place of known or suspected heritage importance to the California Indian community." As you are aware, an Environmental Impact Report is required whenever a project will have or may have "a significant effect" on the environment.

In view of the foregoing, it is legally required by the California Environmental Quality Act and the Guidelines that your department withdraw the Negative Declaration and begin a full EIR regarding the proposed project, such EIR to consider the project effect on Indian heritage resources in the project area.

Our committee will be happy to assist you by providing information regarding the important Nipa heritage resources in the project area. In brief, these include a burial area, a site of religious worship, and a source of materials necessary to Nipa heritage practices. Experts within our Committee are well qualified to speak to these matters and must be heard, not only under CEQA, but on the basis of constitutional protection of freedom of religion.

We further insist that any professional experts hired by you will include a recognized ethnographer, since only ethnographers are qualified to evaluate living cultures.

We wish to emphasize that cooperation at this point is in the best interest of all concerned. Full consideration of Nipa resources at this stage can help all avoid costly delays in the later stages of the decision-making process. To avoid such delays we hope you will contact us immediately so that arrangements may be made to ensure that an adequate EIR is prepared in conformity with law. Should we not receive a favorable response from you within the week, we shall contact the appropriate state agencies and seek whatever legal assistance may be necessary.

Sincerely,

Peter Stern, Chairman
Nipa Indian Resources Committee

SAMPLE PRESS RELEASE

(Type on white paper only)

(Your group's name)

Nipa Indian Resources Committee
P.O. Box 241
Nipa, CA 90000

Contact:
Grace Daley
777-000,
666-111

(Mini-headline, all caps)

NIPA INDIANS ASK
ROLE IN DAM PLAN

(1-½ inch margin)

(1 inch margin)

(Date line)

For immediate release

(Leave space for headline)

The Nipa Indian Resources Committee has requested that the City include tribal experts in planning the proposed Nipa River Dam. In a letter sent to the City Council on February 15, the Resources Committee pointed out that the dam may affect spiritual and cultural resources important to the tribe.

"Under the California Environmental Quality Act, projects should be designed in such a way as to avoid harm to the environment, including cultural resources, whenever possible," stated Peter Stern, Resources Committee Chairman. "We think it is possible that the new dam can be located in such a way that our holy places will not be disturbed."

Stern emphasized that the traditional Nipa religion is still practiced by members of the tribe and that the spiritual sites located near the proposed dam are unique in Nipa religion. "If we lose these places, we lose our religion. This would violate our freedom of religion rights under the First Amendment, as well as violating environmental law."

Exact location of the holy sites has not been disclosed by the Nipas for fear of intrusion on sacred ceremonies. "We will disclose exact locations to the proper authorities at the appropriate time," Stern said.

"If the dam can be shown to be necessary to the community and sound environmentally, then it should proceed," Stern said. "The City can avoid costly delays by cooperating with us now to save our sacred places. We are not opposed to the dam provided that our religion is not destroyed by an ill-chosen location."

(Indicates end of story)

-30-

USEFUL SECTIONS OF THE STATE EIR GUIDELINES

APPENDIX G: SIGNIFICANT EFFECTS

A project will normally have a significant effect on the environment if it will:

(a) Conflict with adopted environmental plans and goals of the community where it is located;

(b) Have a substantial, demonstrable negative aesthetic effect;

(c) Substantially affect a rare or endangered species of animal or plant or the habitat of the species;

(d) Interfere substantially with the movement of any resident or migratory fish or wildlife species;

(e) Breach published national, state, or local standards relating to solid waste or litter control;

(f) Substantially degrade water quality;

(g) Contaminate a public water supply;

(h) Substantially degrade or deplete ground water resources;

(i) Interfere substantially with ground water recharge;

(j) Disrupt or alter an archaeological site over 200 years old, an historic site or a paleontological site except as part of a scientific study of the site;

(k) Induce substantial growth or concentration of population;

(l) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system;

(m) Displace a large number of people;

(n) Encourage activities which result in the use of large amounts of fuel, water, or energy;

(o) Use fuel, water, or energy in a wasteful manner;

(p) Increase substantially the ambient noise levels for adjoining areas;

(q) Cause substantial flooding, erosion or siltation;

(r) Expose people or structures to major geological hazards;

(s) Extend a sewer trunk line with capacity to serve new development;

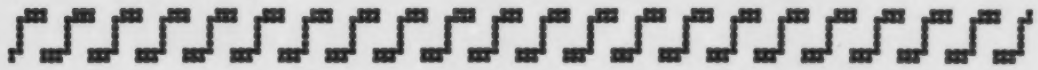
(t) Substantially diminish habitat for fish, wildlife or plants;

(u) Disrupt or divide the physical arrangement of an established community;

(v) Create a public health hazard or a potential public health hazard;

(w) Conflict with established recreational, educational, religious or scientific uses of the area;

(x) Violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations.



PUBLIC LAW 95-341 (SENATE JOINT RESOLUTION 102)

JOINT RESOLUTION

American Indian Religious Freedom

92 STAT. 469

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution:

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of American in Congress assembled, That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

BEST COPY AVAILABLE

92 STAT. 470

42 USC 1996 note.

Presidential report to Congress.

Sec. 2. The President shall direct the various federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with Native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution the President shall report back to the Congress the results of his evaluation, including any changes which were made in adminstrative policies and procedures, and any recommendations he may have for legislative action.

Approved August 11, 1978.

Legislative History:

House Report No. 95-1308 accompanying H.J. Res. 738 (Comm. on Interior and Insular Affairs).
Senate Report No. 95-709 (Comm. on Indian Affairs).
Congressional Record, Vol. 124 (1978):
Apr. 3, considered and passed Senate.
July 18, H.J. Res. 738 considered and passed House; proceedings vacated and S.J. Res. 102, amended, passed in lieu.
July 27, Senate concurred in House amendment.

SENATE CONCURRENT RESOLUTION NO. 87

Resolution Chapter 104

Senate Concurrent Resolution No. 87— Relative to Native American gathering sites on state lands.

(Filed with Secretary of State September 1, 1978.)

LEGISLATIVE COUNSEL'S DIGEST

SCR 87, Garamendi. Native American gathering sites.

This measure would request the Native American Heritage Commission to assist the State Lands Commission in the identification of traditional gathering site preserves on state lands. The measure would request the State Lands Commission to lease 3 parcels of state lands at no cost to the Native American Heritage Commission for traditional gathering site preserves.

WHEREAS, Native American artisans, medicine people, and others interested in traditional crafts and the healing arts find it increasingly difficult to locate and use sites where materials may be gathered for their work; and

WHEREAS, State-owned lands which support stands of tules, willows, and angelicas used for making baskets, bullrush roots for making dyes, or medicinal herbs are often inaccessible; and

WHEREAS, Even though many of these areas are owned by the State of California and controlled by the State Lands Commission, there is no clear policy directing that these lands be held so as to encourage and allow the gathering of traditional materials, and, as a result thereof, those who construct objects from such natural materials and those who practice traditional crafts and healing arts find it extremely difficult to gather their materials and keep their crafts and culture alive; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Native American Heritage Commission assist the State Lands Commission in the identification of traditional gathering site preserves on state lands, and upon such identification, that the State Lands Commission, under its statutory powers, lease at no cost three parcels of state lands for public agency use purposes to the Native American Heritage Commission for traditional gathering site preserves; and, be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Native American Heritage Commission and to the State Lands Commission.

State Registration Programs and Inventory of Historic Sites

The Office of Historic Preservation administers two state programs that provide recognition for historic sites: the California State Landmarks program and the Points of Historic Interest program.

Listing a site in either of these programs is one way of securing the protection available under the federal highway laws discussed in Part I. Placing a site on the National Register or a local landmark list are other ways.

The Office also is responsible for inventorying all historic, cultural, and archaeological resources in the state. Listing a site in the inventory may help protect it from destruction by state projects.

Further information on these programs is available from the Office of Historic Preservation (see "Directory" in this section).

The National Register of Historic Places

Congress established the National Register of Historic Places to give recognition to "districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, and culture." In establishing the National Register, Congress declared "that the historic and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people."

In view of the language Congress has used, it is clear that Native American cultural resources qualify for the National Register, whether they are "historical" (of long tradition) or more recent in use.

Listing a site on the National Register not only brings important federal protections, but also creates greater awareness of the importance of Indian culture in America. It is a way to educate the non-Indian community and public officials to the value of Indian ways. In addition, National Register properties may qualify for federal grants on a matching basis for preservation purposes. National Register status qualifies a property for the tax benefits discussed in Part II.

In order for a site to be placed on the Register, an application must be filed with the Office of Historic Preservation (OHP) of the State of California (see "Directory" in this section). After review by the staff of the OHP, the application goes before the State Historic Resources Commission. Meetings of the Commission are open to the public and occur every other month. Applicants should attend the meetings, if possible, to answer questions. After review of the application, the Commission makes a recommendation to the State Historic Preservation Officer (SHPO). If the SHPO approves the application, it is forwarded to the Keeper of the National Register in Washington, D.C., for official listing. Permission of the property owner is not required for National Register listing.

Application forms and further information can be obtained from the OHP. You may also contact the Native American Heritage Commission regarding the National Register process.

Immediately following is a portion of the National Register Criteria and a portion of the National Register application for Coso Hot Springs. A comparision of these two documents shows one way in which Indian cultural resources can fit within the National Register standards.

In the event you are concerned about the hazards of publicizing a site by placing it on the National Register, you should inform the OHP of the necessity of keeping the exact location secret. The Office is committed to protecting sites from desecration and will cooperate with your request, as will the National Register office.

CRITERIA OF THE NATIONAL REGISTER OF HISTORIC PLACES
(Quoted from the brochure "The National Register", published and distributed by the U.S. Department of the Interior.)

Criteria for Evaluation:

"The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

A. That are associated with events that have made a significant contribution to the broad patterns of our history; or,

B. That are associated with lives of persons significant in our past; or,

C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or,

D. That have yielded, or may be likely to yield, information important in prehistory or history.

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

A. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or,

B. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or,

C. A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life; or,

D. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or,

E. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or,

F. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or,

G. A property achieving significance within the past 50 years if it is of exceptional importance."

(For assistance in applying for National Register status contact the Office of Historic Preservation or the Native American Heritage Commission.)

NOMINATION FORM TO NATIONAL REGISTER OF HISTORIC PLACES: COSO HOT SPRINGS

Statement of Significance (a portion of the nomination form)

Coso Hot Springs has long been in traditional use by the Owens Valley Paiute/Shoshone Indians as evidenced by archaeological remains and ethnological documents (Grants et al. 1968; Kroeber 1925; Panlanqui 1974; Steward 1933 and 1938), and figures prominently in their creation myth (Essene 1935; Hulse 1935; Steward 1936; 1943). Historically, Native Americans from as far away as Wyoming, Utah, and Nevada have come to this site for spiritual and medicinal purposes. Ethnographic field work verifies that Paiute and Shoshone Native Americans have continued this use of Coso Hot Springs from the mid-1800s up to the present. According to Paiute and Shoshone consultants, the Coso Hot Springs as a sacred living entity is the home of major and minor spirits who reside in the surrounding land forms as well as in the warm muds of the spring and pond area. Two of these spirits are the traditional "Keepers of the Spring" and guide the Native Americans in spiritual ceremonies and beliefs associated with Coso Hot Springs. Before entry is made into the hot springs area, traditional prayers and offerings are made to to seek spiritual guidance and therapeutic treatment for their various ailments. The area is central to Paiute/Shoshone cultural ties with their past and important to the maintenance of contemporary Native culture in the Owens Valley. Of specific importance are the springs and medicinal aspects of this area.

As newcomers to the area in 1860 and after, non-Indians learned of Coso Hot Springs from Native Americans and utilized the springs and mud for therapeutic purposes. By 1900, a health resort was established and in the following years, several structures were built to accommodate those who sought Coso's benefits. The area was closed to the public in the mid-1940s.

The buildings which remain at Coso Hot Springs are typical of the type of health resort structures which were built in the California desert during the 1920s, and provide a view of an interesting phase of the evolution of the social and architectural climate of the period. With its rough stone buildings and wooden frame structures, Coso Hot Springs exemplifies a type of desert resort complex popular at a time when city dwellers were seeking escape from the growing southern California population center of that era. The use of native stone materials, low building profiles, and heat-shielding devices such as thick walls and shaded arcades shows a strong environmental sensitivity, creating a notable expression of rustic architecture appropriate to a desert setting.

Though the archaeological values have not been thoroughly defined, it is apparent that the area could yield information on prehistoric ceremonialism, intergroup relationships, and acculturation. The historic archaeological potential of the area relates to both building technology and the health industry of the 1920s.

SOURCES OF FUNDING

A Word of Caution: Application for grants, particularly federal ones, can take a fair amount of time, hard work, and understanding. Allow yourself plenty of time for the process.

Some agencies will accept draft applications and then help you correct them, but they will have to receive the draft as much as two months before the application deadline. You may also seek help from other groups or individuals who have applied for grants: members of college faculties, community groups, public service groups, staff members of city or county government, and staff members of state agencies concerned with cultural resources. In addition, you should consult books and articles on applying for grants. Several are listed under "Sources of Further Information" in this Section.

Never attach all your hopes to one grant application; try as many sources as you possibly can.

Note: Many government and private sources limit grants to non-profit organizations (see Part II, Section 1-D on "Building an Organization").

State

Native American Coordinator
Office of Historic Preservation
P.O. Box 2390
Sacramento, CA 95811
(916) 445-8006

(Administers National Historic Preservation Grants in Aid on matching basis; has up-to-date information on many other grant sources; publishes an annual list of preservation funding sources which is free upon request.)

California Council for the Arts
2022 "J" Street
Sacramento, CA 95814
(916) 445-1530

(Funds arts and cultural projects.)

Coastal Conservancy
1416 Ninth Street, Room 1341
Sacramento, CA 95814
(916) 322-3514

(Depending on annual funds available, buys parcels of coastal land, trailways, etc., threatened by development.)

Department of Parks and Recreation
1416 Ninth Street, Room 1405
Sacramento, CA 95814
(916) 445-6477

(Funds state park purchases; also administers grants to local agencies including Indian tribes and controls bond money allotted to local government for park purchases.)

Federal

Public Works and Development Program
Ralph Cowles
Economic Development Administration
Room W-1466, New Federal Building
2800 Cottage Way
Sacramento, CA 95825

(Grants to non-profit groups and local governments for land purchases and construction of facilities in areas of high unemployment.)

National Oceanic and Atmospheric Administration
Coastal Zone Management Program
Department of Commerce
6010 Executive Blvd.
Rockville, Maryland 20852

Department of Commerce
Planning Assistance Grants

Hugh Taylor
Economic Development Administration
Jack London Square, Suite K77
Oakland, CA 94607

Nephi Clayton
Economic Development Administration
2502 Merced Street, Suite 101
Fresno, CA 93721

Will Marshall
Economic Development Administration
11777 San Vincente Blvd., Suite 900
Los Angeles, CA 90049

(Up to 100% funding for Indian tribes for planning job producing projects that make sound use of resources; can include tourism development.)

Department of Agriculture
Farmers Home Administration Loans
Douglas W. Young
California FMHA Director
459 Cleveland Street
Woodland, CA 95695
(Loans to groups in rural area for projects creating employment and/or community facilities.)

Small Business Adminstration
1441 "L" Street, Room 818
Washington, D.C. 20416
(Offers two loan programs for locally owned businesses, including funds for land purchase; programs are adminstered by the Office of Community Development and the Office of Financing, both at above address; the latter emphasizes loans to minorities.)

National Trust for Historic Preservation
681 Market Street, Suite 859
San Francisco, CA 94105
(415) 556-2707
(Grants of $1,000 to $2,000 to help pay for consultants working on preservation problems.)

Assistant Director
Adminstration and Field Operations
Office of Minority Business Enterprises
Department of Commerce
Washington, D.C. 20230
(202) 967-3007
(Grants, advice, and research contracts to community-based, non-profit groups; may be restricted to urban areas.)

Office of Archeology and Historic Preservation
Department of the Interior
Washington, D.C. 20240
(Oversees duty of federal agencies to do studies and spend funds to avoid destruction of cultural resources when affected by federal projects under the Archeology and Historic Preservation Act of 1974.)

Applications Officer
Division of Research Grants
National Endowment for the Humanities
Washington, D.C. 20506
(Grants to individuals and groups for research and writing relating to cultural resources.)

Youth Grants in the Humanities
National Endowment for the Humanities
Washington, D.C. 20506
(A similar program to the above, but directed at young people; may include "educational" projects.)

Office of Museum Programs
Smithsonian Institution
Washington, D.C. 20506

(Grants to museums, schools, or museum-related groups for support of minority people being trained in museum work.)

Pat Shadle
National Endowment for the Humanities
Washington, D.C. 20506

(Grants for museums and historical interpretation programs.)

Young Adult Conservation Corps
Department of the Interior
Washington, D.C. 20240

(Funds to employ young people in historic preservation and park improvement.)

NOTE: Further assistance in identifying federal funding sources may be available through:

1. A computerized search system sponsored by the federal government. The system is called Federal Assistance Programs Retrieval System (FAPRS). To find a location of this service near you, contact:

FAPRS
Harold W. Scott
Department of Housing and Community Development
921 Tenth Street
Sacramento, CA 95814
(916) 445-4725

2. Federal Information Centers with toll-free phone numbers are located in major cities with lines to many smaller communities. Check your local phone directory under "United State Government--Federal Information Center" or ask the office of your local Congressman.

3. Offices of Congressmen and U.S. Senators are often willing to help locate federal funding sources, prepare applications, and follow up on securing funds.

4. References listed under "Sources of Further Information" in this Section include directories of grant programs.

5. The National Trust for Historic Preservation periodically publishes lists of federal funding sources and may also help you with advice (see listing on prior page).

6. The National Register of Historic Places may help you identify funding sources for properties on the Register:

Program Assistant of the Planning Branch
National Register of Historic Places
Department of the Interior
Washington, D.C. 20240

Private Sources of Funding

Environmental:

Conservation Associates
220 Bush Street
San Francisco, CA 94104

(Planning and land purchase.)

Environmental Alert Group
8300 De Longpre Avenue
Los Angeles, CA 90069

The Nature Conservancy
215 Market Street
San Francisco, CA 94105
(415) 989-3056

(Land purchases.)

The Sierra Club Foundation
220 Bush Street
San Francisco, CA 94104
(415) 981-8634

(Funding of a variety of activities.)

Foundations:

The following are by courtesy of the State Office of Historic Preservation and are a partial list of private foundations that provide grants for preservation-related activities. Foundations with addresses outside California award grants outside their state boundaries.

The Atlantic Richfield Foundation. The Foundation provides direct grants and matching grants primarily for higher education, community funds, and the arts. No grants are awarded to individuals. Grants have ranged up to $144,000.

Contact: The Atlantic Richfield Foundation
515 South Flower Street
Los Angeles, CA 90071

The Luke B. Hancock Foundation. Grants are given to improve education, economic conditions, social services, the environment, and to encourage greater participation in the arts. No grants are awarded to individuals. Grants have ranged up to $25,000.

Contact: The Luke B. Hancock Foundation
3000 Sand Hill Road
Menlo Park, CA 94025

The James Irvine Foundation. Grants are awarded primarily for education, youth services, and community projects not receiving government support. Grants are limited to California, with preference given to projects in Orange County and the San Francisco Bay Area. No grants are awarded to individuals. Grants usually fall between $2,000 and $50,000.

Contact: The James Irvine Foundation
111 Sutter Street, Suite 1520
San Francisco, CA 94104

San Francisco Foundation. Grants are provided for welfare and welfare planning, education, culture and the arts, conservation, and environmental studies in the San Francisco Bay Area. Grants are awarded to tax-exempt, charitable, and educational organizations. Grants vary according to the needs and the nature of the request.

Contact: The San Francisco Foundation
Awards Office
425 California Street, Suite 1602
San Francisco, CA 94104

The L.J. Skaggs and Mary C. Skaggs Foundation. Primarily funds projects in the fields of medical research and social-action programs, but a small portion of the appropriations goes to special projects. The latter category includes grants for historic preservation. Special consideration is given to

requests for seed money for pilot projects that are innovative and experimental. To be funded, grantees must be able to show that, in a short time, the project will be self-sufficient. Although a few grants are given in the special project category, at least one-third of the grants go to new applicants. Individuals cannot apply and organizations must be tax exempt.

Contact: Mr. Phillip M.J. Jelley
Secretary and Foundation Manager
L.J. Skaggs and Mary C. Skaggs Foundation
1330 Broadway, Suite 1730
Oakland, CA 94612

The Harry G. Steele Foundation. Grants are made primarily in the areas of higher and secondary education, including scholarships and the fine arts. No grants are awarded to individuals. Recent grants have ranged from $500 to $74,000.

Contact: The Harry G. Steele Foundation
4500 Campus Drive, Suite 420
Newport Beach, CA 92660

The Levi Strauss Foundation. Grants are awarded primarily for educational and environmental projects. Priority is given to programs directly affecting the communities where the donor has facilities. No grants are awarded to individuals. Grants have ranged up to $36,000.

Contact: The Strauss Foundation
2 Embarcadero Center
San Francisco, CA 94106

The Arthur L. Swim Foundation. General-purpose grants are given, with an emphasis on assisting historical societies, higher education, and research. Grants have ranged up to $11,000.

Contact: The Swim Foundation
P.O. Box 1590
Monterey, CA 93940

The Times Mirror Foundation. The Foundation provides local support for higher education, community funds, and local cultural activities. Grants average between $1,000 and $95,000.

Contact: The Times Mirror Foundation
Times Mirror Square
Los Angeles, CA 90053

The Upjohn California Fund. This fund provides local grants, with an emphasis on community planning, education, and scenic and cultural organizations. Grants average between $500 and $2,000.

Contact: The Upjohn California Fund
Crocker Plaza
Post and Montgomery Streets
San Francisco, CA 94104

The Van Loben Sels Charitable Foundation. Grants are made in support of projects which will test potentially useful innovations in the areas of education, health, welfare, humanities, and the environment. Grants are restricted to California, with an emphasis on the northern part of the state. Grants average between $1,500 and $27,000.

Contact: The Van Loben Sels Charitable Foundation
225 Bush Street
San Francisco, CA 94104

The Wattis Foundation. The Foundation provides grants in the areas of cultural activities and education. Grants average between $1,000 and $50,000.

Contact: The Wattis Foundation
220 Bush Street
San Francisco, CA 94104

The Zellerbach Family. Local grants are awarded to cultural organizations and community funds. No grants are awarded to individuals. Grants have varied from $400 to $75,000.

Contact: The Zellerbach Family
260 California Street, Room 1010
San Francisco, CA 94111

The National Historic Publications Commission. Grants are provided by the Commission to support the collection, editing, and publishing of documentary source material relating to the history of the United States, the papers of American leaders, and documents dealing with major subjects and events in American history. Federal, state, and local agencies are eligible to apply. Grants vary in amount, according to the needs and the nature of the request.

Contact: Executive Director
National Historical Publications Commission
National Archives Building, Room 100
Washington, D.C. 20408

The National Foundation for the Arts and Humanities. The Foundation provides for grants for the arts, architecture, environmental arts, public media, museums, music, theater,

education, and the visual arts. Grants are awarded to individuals, states, and regional arts agencies. Grants vary in amount, according to the needs and the nature of the request.

Contact: Dale Kobler
Regional Coordinator
The National Foundation for
the Arts and Humanities
P.O. Box 245
Sausalito, CA 94965

The United State Steel Foundation. The Foundation awards operating, capital, and research grants in the general areas of education, science, cultural affairs, and community and civic concerns. Non-tax based educational, scientific, and research institutions, as well as community, civic, and cultural organizations with appropriate interests are eligible to apply. Grants vary in amount depending upon the needs and nature of the request.

Contact: Vice President and Executive Director
United States Steel Foundation, Inc.
600 Grant Street
Pittsburgh, Pennsylvania 15230

The George A. and Eliza Gardner Howard Foundation. The Foundation provides grants for projects in the arts, humanities, education, social science, and other areas which contribute to knowledge, aesthetic enrichment, or human welfare. Qualified individuals between 30 and 40 years of age are eligible to apply. Grants have recently ranged from $3,000 to $6,500.

Contact: Office of the Graduate School
Howard Foundation Fellowships
Brown University
Providence, Rhode Island 02912

The Houston Endowment, Inc. Grants for education, youth agencies, and cultural programs (including museums and the performing arts) are awarded to organizations and institutions with appropriate interests. No grants are made directly to individuals. Grants vary in amount depending upon the needs and nature of the request.

Contact: Houston Endowment, Inc.
P.O. Box 52338
Houston, Texas 77052

The Architectural League of New York. The League provides scholarship support in the fields of architecture, city planning, mural decoration, sculpture, landscape and site planning, engineering, crafts, education, decoration, interior design, and photography. Any individual United States citizen is eligible to submit a proposal for review. Special consideration is given to projects which have as a central theme the collaboration of the arts. A maximum of $3,000 can be awarded for a single grant.

Contact: The Brunner Scholarship Committee
The Architectural League of New York
41 East 65th Street
New York, New York 10021

The Lever Brothers Company Foundation, Inc. Grants to support organizations in the fields of public welfare, community improvement, education, and cultural concerns are made to organizations and institutions with appropriate interests. Grants generally range from $1,000 to $5,000.

Contact: Lever Brothers Company Foundation, Inc.
390 Park Avenue
New York, New York 10022

The ALCOA Foundation. Grants are awarded in support of a variety of special interest programs including civic and cultural projects which enhance a community's environment. Qualified organizations with appropriate interests are eligible to apply. Grants vary in amount depending upon the needs and nature of the request.

Contact: The ALCOA Foundation
1501 ALCOA Building
Pittsburgh, Pennsylvania 15219

The Inland Steel-Ryerson Foundation, Inc. Grants for projects in the areas of education, community welfare, hospitals, civic activities, and cultural affairs are awarded to qualified organizations and institutions. The amount of support varies according to the needs and the nature of the request.

Contact: Inland Steel-Ryerson Foundation, Inc.
30 West Monroe Street
Chicago, Illinois 60603

The Kresge Foundation. Grants to support building programs for projects involving music, art, and conservation are made to non-profit, tax-exempt, well established institutions. Grants vary according to the needs and the nature of the request.

Contact: The Kresge Foundation
2401 West Big Beaver Road
Troy, Michigan 48084

Max C. Fleischmann Foundation. The Foundation awards grants to support activities in the areas of education, environmental studies, museums, historical projects, and community improvement. Awards are not available for conferences or travel expenses, the publishing of books or producing of films, or endowment, contingency, or reserve purposes. Tax-exempt, non-profit organizations with appropriate interests are eligible to apply. Priority is given to projects which are not normally financed by public tax funds. Grants vary, recently ranging from $100 to $1,400,000.

Contact: Julius Bergen, Chairman
Max C. Fleischmann Foundation
1 East Liberty Street
Reno, Nevada 89501

The Andrew W. Mellon Foundation. Grants in support of education, cultural projects and institutions, conservation, civic programs, and community services are awarded to organizations and institutions with appropriate interests. No grants are awarded to individuals. Grants vary in amount, according to the needs and the nature of the request.

Contact: Andrew W. Mellon Foundation
140 East 62nd Street
New York, New York 10021

SOURCES OF ADDITIONAL INFORMATION

Directories:

Environmental -

California Environmental Directory

Second Edition (1977)

Available at public libraries or by purchase from:

Center for California Public Affairs
P.O. Box 30
Claremont, CA 91711
(714) 624-5212

State Government -

California Journal Roster and Government Guide

Published annually by:

California Journal
1617 Tenth Street
Sacramento, CA 95814

Lists addresses and phone numbers of many state agencies, all congressmen, and all state legislators. Contains flow chart of legislative process, committee schedules.

Cost: 75¢ plus 6% sales tax per single copy, less in quantity.

GLOSSARY

Action

- Federal term for a project.

Advisory Council on Historic Preservation

- Federal agency that polices federal projects affecting cultural resources on or qualifying for the National Register.

Archaeologist

- Person trained to evaluate remains of past culture.

CEQ (Council on Environmental Quality)

- Federal agency supervising compliance by federal agencies with NEPA; publishes Guidelines for use with NEPA.

CEQA (California Environmental Quality Act)

- State law requiring an EIR when a project conducted or authorized by government will have a significant effect on the environment; applies only to state and local projects, not federal.

Cultural Anthropologist

- Person trained to study cultures.

Due Process

- Government procedures to ensure all parties are treated fairly; includes notice, equal chance to speak at hearings, etc.

EIR (Environmental Impact Report)

- Document analyzing the environmental harm that may result from a project; must include alternatives or possible changes in the project to reduce harm; required under CEQA; Draft EIR circulates for comments by the public; Final EIR responds to comments.

EIS (Environmental Impact Statement)

- Federal equivalent of an EIR.

Ethnographer

- Person trained to evaluate living cultures.

First Amendment Rights ("Freedom of Religion")

- Constitutional prohibition against governmental interference (federal, state, or local) in practice of a religion by a person or a group; destruction of cultural resources or denial or access to sacred sites on public land may be illegal under the First Amendment.

Guidelines

- Rules adopted for use in complying with various law. State Guidelines govern definitions and procedures for all state and local governments under CEQA; federal agencies must comply with CEQ Guidelines and the agencies' own guidelines; Guidelines have the effect of law.

Initial Study

- Document required by CEQA if state or local agency doubts the necessity of an EIR; must be done before a Negative Declaration is issued.

Mitigation

- Changing a project or taking other steps to reduce harm to resources.

Native American Heritage Commission

- A state agency located within the Governor's Office and charged with responsibility for protecting the cultural heritage of California Indians; holds meetings throughout the state, assists in local efforts, publishes a newsletter, sponsors legislation, provides information to the community; charged with inventorying cultural resources.

National Register of Historic Places

- A federal listing of cultural, historical, and archaeological resources that are of national, state, or local importance which is necessary in order for a site to be protected by the National Historic Preservation Act and Executive Order 11593.

Negative Declaration

- Announcement by a state or local government agency that it believes a project does not require an EIR; may be challenged.

NEPA (National Environmental Policy Act)

- Federal law requiring an EIS whenever an "action" conducted, authorized, or funded by the federal government may have a significant effect on the environment.

Notice

- Notification to the public of government activity, such as issuance of a Negative Declaration, announcement of a hearing, etc.

OHP (Office of Historic Preservation)

- A state agency within the State Department of Parks and Recreation which serves as staff to the State Historic Preservation Officer; conducts survey of historic, cultural, and archaeological sites; reviews National Register applications and those for California State Landmarks and Points of Historic Interest; also reviews applications for funding for preservation of National Register properties; provides information to the public on a broad range of preservation programs and assists in protecting resources.

Project

- A term for an activity under CEQA that is conducted, financed, or approved by state or local government; not confined to construction projects.

Significant Effect

- Destruction, alteration, removal, etc., of a cultural resource or other environmental feature; if there is even a possibility of an effect or controversy about it, an EIR is required under CEQA and an EIS under NEPA.

SHPO (State Historic Preservation Officer)

- Person designated by the Governor to help protect the cultural, historical, and archaeological resources in the State of California; cooperates with the federal government (Advisory Council on Historic Preservation) to guard against harm to cultural resources by federal projects; recommends sites for the National Register; assisted by the staff or the Office of Historic Preservation.

TABLE OF STATUTES, REGULATIONS, AND CASES
(for use by your attorney)

STATUTES AND REGULATIONS:

California Environmental Quality Act (CEQA): California Public Resources Code Sections 21000-21176, as amended.

State EIR Guidelines: California Administrative Code, Title 14, Sections 15000-15203 and Appendices, as amended. Although termed "guidelines," these regulations have the force of law.

National Environmental Policy Act of 1969 (NEPA): 42 U.S.C. Section 4321 et seq..

Related: Executive Order 11514 (1970).

Executive Order 11991 (1977), 42 C.F.R. 26967.

Council on Environmental Quality NEPA Regulations: 43 C.F.R. 55977 (No. 230, Nov. 29, 1978).

National Historic Preservation Act of 1966 (NHPA): 16 U.S.C. 470, as amended.

Related: Executive Order 11593, 36 C.F.R. 8921 (No. 95, May 15, 1971). (Duties of federal agencies.)

President's Memorandum on Environmental Quality and Water Resources Management, July 12, 1978.

Advisory Council on Historic Preservation Regulations, "Protection of Historic and Cultural Properties," 44 C.F.R. 6062 (No. 21 Jan. 30, 1979). (Federal agencies' duties and procedures under NHPA.)

National Register of Historic Places, 36 C.F.R. 60, 63, 64. (Criteria for inclusion; duties of federal agencies, and procedures.)

Department of Transportation Act of 1966: 80 Stat. 931, P.L. 89-670, as amended in 1968; 49 U.S.C. 1653, P.L. 90-495.

and **Federal-Aid Highway Act of 1966:** 49 U.S.C. 1653, P.L. 90-495 (as amended in 1968).

Related to both of the above:

Federal-Aid Highway Program Manual (FHPM), Dec. 30, 1974;
FHPM 7-7-2 "Content of the "EIS."

California Land Use Laws:

Govt. Code Section 65860.
(Authorizes local zoning for "scenic beauty and use of natural resources.")

Govt. Code Sections 25373 re counties and 37361 re cities.
(Authorizes local governments to enact laws protecting cultural resources.)

Govt. Code Section 65858.
(Permits "interim zoning" for moratorium purposes without usual public hearings.)

Code of Civ. Proc. Sections 1238-1239.
(Authorizes condemnation of property, including easements, by local governments based on historic value; Sections 1241 and 1241.7 protect property in public use and recognized as "historic" from condemnation for other public use.)

Bus. and Prof. Code Sections 11500-11641.
(Basis for government regulation of subdivision and subdivision exaction.)

Govt. Code Sections 65300 et seq., specifically 65860.
(Requires local governments adopt general plans providing for "open space" and zoning in a consistent manner.)

Taxation Measures:

Federal: I.R.C. Section 170, especially 170(f); Rev. Ruling 64-205.
(Charitable deduction for contribution of easements and other property interests.)

I.R.C. Section 2522 and related Regulations.
(Deduction of charitable contributions from taxable gifts.)

State: Rev. and Tax Code Section 402.1.
(Requires local tax assessor to consider publicly held restrictions on easements.)

Govt. Code Sections 50280-50289.
(Special property tax treatment for historic properties pursuant to contract.)

Denying Public Access to Information Harmful to Resources:

Govt. Code Section 655 (added by Statutes of 1968).

Regarding Access and Freedom of Religion:

Senate Joint Resolution 102, P.L. 95-341, 92 Stat. 469, 95th Cong. 2nd Sess. (1978).
(Reprinted in this Section.)

(State) Senate Concurrent Resolution 87; Resolution Chapter 104 (Sept. 1, 1978).
(Reprinted in this Section; permits three state parcels to be open for gathering of materials.)

CASES UNDER CEQA:

Defining "project":

City of Orange v. Valenti (1974) 37 Cal. App. 3d 240.

Wildlife Alive v. Chickering (1976) 18 Cal. 3d 190.

Bozung v. Local Agency Formation Commission (1975) 13 Cal. 3d 263.

Defining "significant effect":

No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68.

People v. County of Kern (1974) 39 Cal. App. 3d 830 (footnote 8).

Wildlife Alive v. Chickering, supra.

Exemption for "ministerial acts":

Plan for Arcadia v. City Council of Arcadia (1974) 42 Cal. App. 3d 712, modified at 43 Cal. App. 3d 202A.

Natural Resources Defense Council v. Arcata Naticwan Corp. (1976) 59 Cal. App. 3d 959.

Day v. City of Glendale (1975) 61 Cal. App. 3d 817.

People v. Department of Housing and Community Development (1975) 45 Cal. App. 3d 185.

Exemption for "maintenance" and "emergencies":

Erven v. Riverside County Board of Supervisors (1975) 53 Cal. App. 3d 1004.

Wildlife Alive v. Chickering, supra.

Edna Valley Associates v. San Luis Obispo Coordinating Council (1977) 67 Cal. App. 3d 444.

Meyers v. Board of Supervisors of Santa Clara County (1976) 58 Cal. App. 3d 413.

Decision to Adopt Negative Declaration:

No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68.

Appellate Courts divide:

Friends of B Street v. City of Hayward (1977) 75 Cal. App. 3d 148.
(Now on appeal to Cal. Supreme Ct.)

but see:

Snyder v. City of South Pasadena (1975) 53 Cal. App. 3d 1051.

Pacific Water Conditioning Assoc. v. City Council (1977) 73 Cal. App. 3d 546.

EIR contents:

County of Inyo v. Yorty (1973) 32 Cal. App. 3d 795.

San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal. App. 3d 584.

County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185. (Project description, project alternatives, and mitigation.)

Big Rock Mesa Property Owners Association v. Board of Supervisors (1977) 73 Cal. App. 3d 218. (Assessment of effects.)

Hixon v. County of Los Angeles (1974) 38 Cal. App. 3d 378. (Assessment of effects.)

Plan for Arcadia v. City Council of Arcadia (1974) 42 Cal. App. 3d 712. (Assessment of effects.)

People v. County of Kern (1976) 62 Cal. App. 3d 761. (Assessment of effects.)

Consideration of comments:

Environmental Defense Fund, Inc. v. Coastside Water Dist. (1972) 27 Cal. App. 3d 635.

People v. County of Kern (1976) 62 Cal. App. 3d 761.

Society for California Archaeology v. County of Butte (1977) 65 Cal. App. 3d 832.

City of Carmel-by-the-Sea v. Board of Supervisors (1977) 71 Cal. App. 3d 84.

San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal. App. 3d 584.

City of Rancho Palos Verdes v. City Council of Rolling Hills Estates (1976) 59 Cal. App. 3d 869.

Project decision and role of courts:

No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68.

Rosenthal v. Board of Supervisors of Los Angeles (1975) 8 Cal. App. 3d 815.

Friends of Mammoth v. Board of Supervisors (1972) 8 Cal. App. 3d 47 (footnote 8).

County of Inyo v. Yorty (1977) 71 Cal. App. 3d 185.

Burger v. County of Mendicino (1975) 45 Cal. App. 3d 322.

City of Carmel-by-the-Sea v. Board of Supervisors (1977) 71 Cal. App. 3d 84.

San Francisco Ecology Center v. City and County of San Francisco (1975) 48 Cal. App. 3d 584.

Running Fence Corp. v. Superior Court (1975) 51 Cal. App. 3d 400.

Environmental Defense Fund, Inc. v. Coastside Water Dist. (1972) 27 Cal. App. 3d 695, 28 Cal. App. 3d 512. (Recall of stay.)

Hixon v. County of Los Angeles (1974) 38 Cal. App. 3d 370.

Timing of court challenges:

Desert Environment Conservation Assoc. v. Public Utilities Comm. (1973) 8 Cal. 3d 739. (Project decision.)

Simons v. City of Los Angeles (1977) 72 Cal. App. 3d 739. (Project exemption.)

Simi Valley Recreat. and Park Dist. v. Local Agency Formation Commission (1975) 51 Cal. App. 3d 648. (Determination of no significant effect.)

People Ex. Rel. Dept. of Pub. Works v. Bosio (1975) 47 Cal. App. 3d 495.
and People v. Dept. of Housing and Community Development (1975) 45 Cal. App. 3d 185.

Standing:

Bozung v. Local Agency Formation Comm. (1975) 13 Cal. App. 3d 263.

Remedies:

Environmental Defense Fund v. Coastside Water Dist. (1972) 27 Cal. App. 3d 695.

CASES UNDER NEPA:

Defining "action":

Homeowners Emergency Life Protection Comm. v. Lynn (9th Cir. 1976) 541 F. 2d 814.

Sierra Club v. Morton (N.D. Cal. 1975) 400 F. Supp. 610.

Kleppe v. Sierra Club (1976) 427 U.S. 390.

Friends of the Earth v. Coleman (9th Cir. 1975) 518 F. 2d 323.

Defining "significant effect":

Hanly v. Kleindienst (2d Cir. 1972) 471 F. 2d 823 cert. den. 412 U.S. 908.

Davis v. Coleman (9th Cir. 1975) 521 F. 2d 661.

City of Davis v. Coleman (9th Cir. 1975) 510 F. 2d 813.

Aberdeen and Rockfish R.R. Co. v. SCRAP (1975) 422 U.S. 289.

Contents of EIS:

Trout Unlimited v. Morton (98th Cir. 1974) 509 F. 2d 1276.

Davis v. Coleman (1975) 521 F. 2d 661.

Environmental Defense Fund v. Tenn. Valley Auth. (E.D. Tenn. 1972)

Tierra Santa Community Council v. Richardson (S.D. Cal. 1973) 4 E.L.R. 20309.

Friends of the Earth v. Coleman (9th Cir. 1975) 518 F. 2d 323. (Project alternatives.)

Keith v. Volpe (C.D. Cal. 1972) 352 F. Supp. 1324, affd. 506 F. 2d 696, cert. den. 420 U.S. 908. (Project alternatives.)

Vt. Yankee Nuclear Power v. Natl. Res. Defense Council (1978) 98 S.C. 1197. (Project alternatives.)

Natl. Res. Defense Council v. Hughes (D.C. D.C. 1977) 10 E.R.C. 1713. (Project alternatives.)

Consideration of Comments:

Calvert Cliffs v. Atomic Energy Comm. (D.C. Cir. 1971) 449 F. 2d 1109, cert. den. 404 U.S. 942 (1972).

Life of the Land v. Brinegar (9th Cir. 1973) 485 F. 2d 460.

Timing of EIS:

Aberdeen and Rockfish R.R. Co. v. SCRAP (1975) 422 U.S. 289. (Emphasis on ICC authority.)

Kleppe v. Sierra Club (1976) 427 U.S. 390. ("Research" as opposed to a "proposal".)

Harlen Valley Trans. Assoc. v. Stratford (2d Cir. 1974) 500 F. 2d 328.

Project Decision and Role of the Courts:

Life of the Land v. Brinegar (9th Cir. 1973) 485 F. 2d 460.

Jicarilla Apache Indians v. Morton (9th Cir. 1973) 471 F. 2d 1275.

But see: Calvert Cliffs v. Atomic Energy Comm. 404 U.S. 492 (1972).

Conservation Council v. Froehlke (4th Cir. 1973).

Environmental Defense Fund v. Corps of Engineers (5th Cir. 1974).

Sierra Club v. Froehlke (7th Cir. 1973).

Environmental Defense Fund v. Corps of Engineers (8th Cir. 1972).

Davis v. Coleman (9th Cir. 1975) 527 F. 2d 661.

Lathan v. Brinegar (9th Cir. 1974) 506 F. 2d 677.

Trout Unlimited v. Morgan (9th Cir. 1975) 509 F. 2d 1276.

Timing of Challenge:

cf: Lathan v. Brinegar (9th Cir. 1974) 506 F. 2d 677 with Lathan v. Volpe (9th Cir. 1971) 455 F. 2d 111.

Davis v. Coleman (9th Cir. 1975) 521 F. 2d 661.

Arlington Coalition on Transp. v. Volpe (4th Cir. 1972) 458 F. 2d 1323, cert. den. 409 U.S. 1000.

Ecology Center of Louisiana v. Coleman (5th Cir. 1975) 515 F. 2d 860.

Wyoming Outdoor Coord. Council v. Butts (10th Cir. 1973) 484 F. 2d 1244.

Standing:

Aberdeen and Rockfish R.R. Co. v. SCRAP (1975) 422 U.S. 289.

Davis v. Coleman (9th Cir. 1975) 521 F. 2d 661.

Remedies:

Cady v. Morton (9th Cir. 1975) 527 F. 2d 786.

Homeowners Life Protect. Assoc. v. Lynn (9th Cir. 1976) 541 F. 2d 814.

Friends of the Earth v. Coleman (9th Cir. 1975) 518 F. 2d 323.

Sierra Club v. Volpe (N.D. Cal. 1972) 351 F. Supp. 1002.

Aberdeen and Rockfish R.R. Co. v. SCRAP (1975) 422 U.S. 289.

Under Department of Transportation Act:
(And by implication, Federal-Aid Highway Act.)

Citizens to Preserve Overton Park v. Volpe (1971) 401 U.S. 402. (High standard for protecting resources.)

Under First Amendment:

People v. Woody (1964) 61 Cal. 2d 716, 40 Cal. Rptr. 69. (Peyote use protected by First Amendment.)

Wisconsin v. Yoder (1972) 406 U.S. 205. (Groups's culture protected as religion under First Amendment.)

Satiacum v. Laird (1972) 475 F. 2d 302. (Indian religious ceremonies in Arlington cemetery protected by First Amendment.)

Aluli v. Brown (1977) 437 F. Supp. 602. (Use of environmental law to protect religious sites.)

Wisconsin v. Funmaker (1976) Nill. No. 808042. (Game laws violate Indian religious freedom; available from Native American Heritage Commission, State of California.)

But see:

Badoni v. Higginson (1977) 455 F. Supp. 641. (Decision misreads Yoder and the series of decisions cited re Pillar of Fire; also ignores case law recognizing First Amendment rights in public property.)

U.S. v. Mowat (1978) 582 F. 2d 1194. (Military needs outweigh religious freedom.)

Donahue v. Butz (1973) 363 F. Supp. 1316. (Denying return of ownership to Indians of religious sites.)

See also:

D. Gray, "Indian Freedom of Religion" (1979). (Analysis of above cases; available from Native American Heritage Commission, State of California.)